DARTMOUTH MEMORIALS

JUDGES RECENTLY DECEASED

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MEMORIALS

OF

JUDGES RECENTLY DECEASED,

GRADUATES

OF

DARTMOUTH COLLEGE.

1880.

CONCORD:
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PREFACE.

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At the annual meeting of the Association of the Alumni of Dartmouth College, held at Hanover, N. H., June 28, 1876, it being in commencement week, a committee was appointed to nominate an orator for the commencement exercises of the following year; but on a subsequent motion, offered by William H. Duncan, Esq., it was commended to the committee to consider the subject of memorials of Judges Parker, Redfield, and others, recently deceased. The committee consisted of Hon. Benjamin F. Prescott (since Governor of the state of New Hampshire), Prof. Elihu T. Quimby, and William H. Haile, Esq.; and the committee was authorized to report at its own convenience.

The same committee was continued in 1877 and in 1878, but in the latter year with the addition of William H. Duncan, Esq. The committee reported June 25, 1879, and was reäppointed, with the addition of Judges Isaac W. Smith and Clinton W. Stanley.

In consequence of this action of the alumni, the addresses contained in this publication were given at Hanover, June 23, 1880; and on the day following the Association

Voted, That the thanks of the alumni of Dartmouth college be extended to the speakers of yesterday for their memorial addresses in honor of eminent deceased judges, graduates of the college.

It will be at once evident that the list was not exhausted; but the time limited the selection to such as were recently deceased. A memorial of the late Salmon P. Chase, LL. D., class of 1826, Chief-Justice of the Supreme Court of the United States, given by Hon. William M. Evarts in 1874, was published in that year.

JUNE 6, 1881.

MEMORIALS.

Page

SAMUEL SUMNER WILDE, LL. D., CLASS OF 1789.

By Nathan Crosby, LL. D., Class of 1820, Justice of the Municipal Court, Lowell, Mass., ... 1

ANDREW SALTER WOODS, LL. D., CLASS OF 1825.

By Harry Bingham, LL. D., Class of 1843, ... 25

MATTHEW HARVEY, LL. D., CLASS OF 1806.

By George W. Nesmith, LL. D., Class of 1820, late Judge of the Supreme Judicial Court of the State of New Hampshire, 31

WILLIAM HENRY BARTLETT, CLASS OF 1847.

By Isaac W. Smith, Class of 1846, Judge of the Supreme Court of the State of New Hampshire, ... 41

RICHARD FLETCHER, LL. D., CLASS OF 1806.

By Rev. A. J. Gordon, D. D., of Boston, Mass., ... 55

IRA PERLEY, LL. D., CLASS OF 1822.

By Charles H. Bell, Class of 1844 (since Governor of the State of New Hampshire), ... 70

JOEL PARKER, LL. D., CLASS OF 1811.

By J. Everett Sargent, LL. D., Class of 1840, late Chief-Justice of the Supreme Judicial Court of the State of New-Hampshire, ... 84

ISAAC FLETCHER REDFIELD, LL. D., CLASS OF 1825.

By Wheelock G. Veazey, Class of 1859, Judge of the Supreme Court of the State of Vermont, ... 95

JONAS CUTTING, LL. D., CLASS OF 1823.

By John A. Peters, Judge of the Supreme Judicial Court of the State of Maine, ... 112

Page

ETHER SHEPLEY, LL. D., CLASS OF 1811.

By James W. Patterson, LL. D., Class of 1848, late member of the Senate of the United States, ... 120

GEORGE FOSTER SHEPLEY, LL. D., CLASS OF 1837.

By Daniel Clark, LL. D., Class of 1834, Judge of the United States District Court for New Hampshire, ... 130

MEMORIALS.

SAMUEL SUMNER WILDE, LL. D.,

CLASS OF 1789.

BY NATHAN CROSBY, LL. D., CLASS OF 1820.

ACADEMIC biography admits a review of character and events of life quite different from ordinary biography, eulogy, or discourse. Called for by the alumni of the college, in recognition and due appreciation of the distinguished services of an alumnus, the mother-and-brotherhood seems to demand the *in memoriam* style—the mellowed tone of family affliction; the affectionate rehearsal of love, respect, gratitude, and thanksgiving; of home blessings and mental equipments bestowed; and the full record of life's labors laden with highest honors. Here the good seed was sown, and we are now to count the garnered sheaves of ripened grain—honors won; and may, with propriety, call to mind the character of the college at that day, and the opportunities for mental culture and professional study,—the log-hut attractions and limited accommodations of our Dartmouth in her early days.

It is not only justifiable, but it is commendable, in the alumni to make and preserve permanent record of their distinguished brethren, that our *alma mater* may point her young aspirants for learning from year to year, in long succession, to the eminent men who obtained here, by hard and diligent labor, their earliest mental treasures for their professional life-work, to excite in them a reasonable and glowing ambi-

tion, and give practical assurance what labor, pluck, and culture can do.

College study and discipline are developing powers very like the prospecting for mines in our mountains and valleys, when digging, boring, and smelting expose the indications, veins, or strata of pure metal. They plant in the virgin soil various seeds of mental activities, to expose native proclivities and idiosyncrasies, that the student may discover his capabilities, and choose his life-work and duties with probable certainty. But the ruling intellectual gift is not always made certain by college life, as the cropping out of unexpected mental specialties in subsequent culture often reveals mistaken hopes and confidences, which may, unhappily, resist a new departure. When pursuits are fitly chosen; when purpose and persistency unite; when body and mind coöperate, and opportunity is propitious, and the alumnus becomes honorable, reflecting credit upon all the educational institutions and great minds which contributed to his elevation,—eminent results may then well claim special recognition and admiration at alumni celebrations.

Judge Wilde possessed the right powers, gave the persistent diligence, had the great opportunity, and held it until he won a judicial reputation superior to that of all the distinguished judges from this college. He graduated in 1789,—ninety-one years ago,—when our college was only twenty years old; when the faculty consisted of only a president, two professors, and one tutor; when the library numbered some fifteen hundred volumes, mostly theological; and when the literary societies—Social Friends and Fraternity—were being organized. The New Hampshire Alpha was established, and this veritable old Dartmouth Hall was erected, while he was in college. Hon. John S. Sherburne,—our first judge of distinction, who was a member of congress, attorney of the U. S. district court of New Hampshire, and judge of the district court, thirty-four years in all,—had been graduated nine years when Mr. Wilde en-

tered; and the eminent theologian and scholar, Asa Burton, D. D., who spent his long life over a church in Thetford, Vt., and who is said to have instructed sixty students in theology, followed Sherburne in the next class. While Wilde was in college, as an inspiration to follow or to lead, he found Daniel Dana, one of our presidents, our distinguished professor, Ebenezer Adams, Jesse Appleton, one of the presidents of Bowdoin college, Ebenezer Porter, so long the distinguished president of the Theological Seminary in Andover, Mass., the far-famed Prof. Smith in this college, and President McKean of Bowdoin college, having thrown back upon Dartmouth, from an earlier period than Burton, their forth-putting intellectual strength. When we call up these and other eminent men, down to Webster in 1801, we are left to exclaim, What minds, what culture, what aims, what distinguished results from such limited opportunities and sources of intellectual improvement and superiority, these earlier years produced! When we see our present surroundings,—our libraries, curriculum, and faculty, our funds, benefactors, and our honors,—and feel our pantings for a still higher life of accomplishment and broader usefulness, we may well congratulate our *alma mater* in the past, may rejoice with her in her present aboundings, and cherish the fondest hopes of a noble future.

Judge Wilde was the son of Deacon Daniel and Ann (Sumner) Wilde, of Taunton, Massachusetts, and was born there February 5, 1771. The mother was daughter of Dea. Samuel Sumner of the same town. Their fathers were farmers; and being deacons, and living about equi-distant from Plymouth and Salem, the original immigrant homes of the Pilgrims and Puritans, quite probably young Wilde may have possessed the blood of both Puritan and Pilgrim, and thus received the full inspiration of courage, zeal, and endurance of the brave and thoughtful men who crossed an ocean, built homes in the wilderness, cultivated the friendship of the Indian, defying the beasts of the forest,

that they might worship God according to their faith and pleasure.

Having a deacon at either hand, and motherly counsel at both homes, he was undoubtedly well posted in both the religious and political teachings of the times, and especially in a proper submission to the great doctrine of "being led in the way he should go." We have not been told what led him to go to college and to seek a professional life, but the purpose seems to have been formed quite early, as he entered college at sixteen, and a couple of years must have been consumed in his preparation.

Under the customs and necessities of the day, he was placed under the tuition of his pastor, the Rev. Ephraim Judson, a graduate of Yale in 1763, a ripe scholar, and who undoubtedly faithfully performed the trust, judging from the young student's early college honors. But it must have required an anxious and painful resolution in these parents to send their young son so far away, into the wilds of New Hampshire and to an *Indian* college, when Harvard and Yale were so near, and of great repute. The roads were long, crooked, unwrought, and woody; settlers were few and far between, all Hanover containing only some 400 inhabitants; and the college officers had an Indian school under their guidance, with a dozen or more Indians in it. A serious conviction among religious and conscientious people prevailed, that great injustice had been rendered the Indians by the possession of the country belonging to them without due remuneration, and especially as the king's charter had been granted the immigrants with an express proc lamation that one great purpose of the grants secured, or, rather, enjoined, the civilization of the native tribes. These benevolent deacons were undoubtedly touched with the current sympathy at the long delay to reach effectively the Indian heart and life; an effort which Dr. Wheelock had inaugurated and pressed upon public attention by his labors and successes in the charity school in Lebanon, Conn., and

more impressively in Hanover. Mr. Judson had been the successor of Rev. Mr. Whittaker at Norwich, who had so affiliated with Dr. Wheelock in his Indian enterprise and opinions that he piloted Occum, Dr. Wheelock's converted Mohegan Indian and Presbyterian minister, through England and Scotland, to obtain funds for his new plan of civilizing the tribes by educating their boys and girls with the whites, and then returning them as teachers and ministers, in the great work of their evangelization. Dr. Wheelock had been identified with the Great Awakening, and was well known in all New England for his religious seal, as well as for his new consecration to the conversion and elevation of the Indians. This was the proclaimed Indian college, and Dr. Wheelock's zeal and reputation gathered into it, mostly, the sons of pious people in Connecticut and along the Connecticut river; and it is quite certain that these great friends of the Doctor, who had just passed on to his reward, would have secured young Wilde for Dartmouth.

Will the alumni admit a thought or two upon the possible mode of his journeying to this place in 1785 from Taunton, a distance of one hundred and fifty miles, consuming three or four days. We may imagine he united with others, as Vaill of the class of 1778 did, to make his journey here, by putting all the luggage of the party upon one horse, and then walking all the way from Connecticut: or perhaps the father, upon one horse, put the son upon another, as Judge Webster did when he first carried his son Daniel to Exeter academy; or perhaps he did as Wells, long after of the class of 1814, who took the honors of his class, did,—take his books and wardrobe in a pack upon his back, and thus travel his way hither. In whatever mode of transit, the only account of his arrival we can now discover is, that his name is duly entered upon the catalogue; and in due time he joins the United Fraternity. College records fail to show his scholarship or standing while in college, but society records show that he filled a place upon the important committees of the

Fraternity, was president during his senior year, and became a member of the Phi-Beta-Kappa Society. Those of us who graduated during the first quarter of the present century, and remember our hard stage rides here, our poor rooms, short commons, board at $1.25 to $2.00 per week, our then scant libraries and limited privileges for general study and acquisition, can quite vividly imagine the rough dwellings, the early college buildings, and the ungraded lands throughout the village, which greeted the eyes of young Wilde at his arrival and during his residence here. Every building of his day has been swept away, the rough places have been smoothed, and we now have a goodly heritage, in buildings, avenues, parks, and ornamental trees and shrubs.

Our graduate of 1789 met the old and absurd *servantship* which prevailed in our colleges a century ago—the compulsory service of the freshman at the demand of the senior—when the freshman must carry the wood and water, brush the boots, and sweep the room of some proud or lazy senior. Wilde, perhaps, served his senior, Goddard, who afterwards met him in the Hartford convention; or his senior Marsh, who afterwards became our courteous and honored trustee;—and we are not informed whether Appleton, the president of Bowdoin college, or President Porter of the Andover Theological Seminary, carried wood and water for Wilde when he became senior; but I dare say he extorted payment to balance the account, though a little after Wilde's day the trustees changed the custom, so that the freshman might refuse the service, but would thereby lose his claim to receive service when he became a senior.

His class graduated twenty-four. Two became governors —Chittenden of Vermont, who also became chief-justice, and Dinsmoor of New Hampshire, who was also a member of congress. Of the eight who read law, three did not practise. Of ten who studied theology, two never preached. Two of the class became farmers, one a teacher, and one went into the army. Dunham became a somewhat distin-

guished teacher; was the editor of the Dartmouth Eagle, wrote an eulogy on Washington, and a pamphlet in defence of President Wheelock in his controversy with the trustees. Judge Wilde received the only honorary degree conferred upon his class.

He read law with the distinguished David L. Barns, then of Taunton, but who afterwards became United States district judge in Rhode Island, and, as soon as admitted to the bar, opened an office in Waldoborough, Maine. He soon married the daughter of General Cobb, of Taunton, and within two years had removed from Waldoborough to Warren, Maine, where he remained until 1799, when he sought the wider and more lucrative field of Hallowell. Here was the first academy in Maine, the Vaughn library of 10,000 volumes, and a town of great business facilities, with families of great social culture and generous hospitalities. He had moved from place to place as his increasing practice gave means, and as his ambition pressed him forward and upward in his professional life. He soon placed himself at the head of his profession, and exhibited great learning in the broad principles and technical features of real estate law and its necessary qualifications to make an American system, as well as in the logical precision and exact machinery of special pleadings, when laboring under the mysticism and black letter vocabulary of abatement, replication, rejoinder, rebutter, and so on to the final demurrer; and when equity jurisdiction was given to courts, he was found equal to the full apprehension and elucidation of all its underlying principles of correcting errors and administering righteousness. His mind embraced, clearly, comprehensively, and inflexibly, the doctrines and application of realty, of special pleadings, and of equity, the three great judicial fields of investigation and judgment during the important period of introducing an American jurisprudence. He here won such distinction that Gov. Strong called him to a seat upon the bench of the supreme judicial court,

which he honored and adorned for thirty-five years, the longest term of a judicial officer in the state except Judge Sewall, who held office in the same court a fraction over thirty-six years.

He was the first judge of marked eminence sent forth from our college. Down to his death we had given more than fifty judges of common law courts, not counting justices of municipal and probate courts, among them one chief-justice, seven associate and justices of circuit courts of the United States, three chief-justices of the New Hampshire supreme court, and as many in other states. Of all these judges, by the general verdict and judgment of legal men, Judge Wilde stands the head and leader, in massive proportions as a lawyer, and yet in all simplicity and courtesy of the professional brother and gentleman.

Those of us who remember the great character, dignity, and urbanity of the judges of the Massachusetts supreme court under Chief-Justices Sewall, Parker, and Shaw, with Wilde, Putnam, and others, associate justices, will appreciate the honor of eminent learning and the glory of unspotted ermine. Said a distinguished ex-member of the supreme court of Massachusetts, "Judge Wilde ranked among the six most eminent judges upon that bench, down to the resignation of his judgeship." It would be presumptuous in me, in the time allotted me for this service, to detain you, brethren, and especially you gentlemen of the law, in any even general delineation of his legal culture, mental characteristics, the machinery of his logic, or his power to reconcile or weigh discordant reasonings and views of counsel upon fact and law, inasmuch as his image and superscription, his reasonings and opinions, are given in the Massachusetts Reports from 1815 to 1850, bearing almost inimitable exhibition of clearness, force, and brevity, in purest New England English, without needless embellishment or extraneous disquisition, throughout idiomatically legal and logical, brief when possible, and always clear.

Judge Wilde, as most lawyers did in his day, became in early life somewhat of a politician, but not especially fortunate in *one post* of honor which he accepted and filled. He was a member of the Hartford convention, a much abused and ridiculed assemblage of twenty-four men, called together by governors of the New England states to advise concerning the then extreme dangers of the war of 1812. He served in the legislature, from Warren, two years, and was one year state councillor; was twice an elector of President and Vice-President of the United States, and a member of the constitutional convention of 1820. The Hartford convention now only lives in history, justified in its call, its members admitted to have been ranked among the most eminent men in New England for ability, integrity, political wisdom and experience, and its proceedings and results exhibited only the purest patriotism and wise suggestions. The war had been prosecuted, with various successes and disasters, two years, when Napoleon was suddenly overthrown and exiled, and England, one of the allied nations of Russia, turned at once her great fleet to our coasts, and was threatening utter destruction to our Northern seaboard. Castine had been taken, Washington had been burned, Baltimore, Bladensburg, and Bellair had been under fire of the English forces, and our regiments were mostly upon the Canadian frontier. New England now wanted her regiments for defence, but the government denied them, and left her to defend herself. This convention was summoned by the governors to confer upon the duty of the government and rights of the states in the pressing emergency of securing immediate protection. After a session of twenty days, the convention adjourned. History has fully justified the measure, the proceedings, and the advice. While the convention was in session, the commissioners at Ghent signed a treaty of peace, the prime alleged cause of the war, impressment of seamen, having been waived or withdrawn. This unexpected close of the war filled the country with joy and

rejoicing, and left the convention overwhelmed with great malice and interminable abuse. Ten years after, such political taint was unceasingly charged upon the supporters of the convention, that Mr. Webster felt obliged to deny all participation in it in a letter to his friend Vietcham, of New York. Few of its members ever reached a public office by election after. Judge Wilde received his judgeship afterwards, and Harrison Gray Otis was elected and served as senator in congress.

I have said Judge Wilde first opened his office in the small town of Waldoborough, and removed to Warren, and then to Hallowell, as he gained substance, reputation, and ambition, intent upon occupying a field large enough to command and call forth his highest energies. Others of our graduates did the same with great success, whilst others were content to grow with the people of their choice, and the country around them, satisfied with a limited practice, with town offices, and honors, and perhaps farming, unconscious of smothered talents or lost opportunities. Had Daniel Webster taken the clerkship his father so affectionately procured for him, and which he at first was inclined to accept, and but for Mr. Gore's advice would have accepted; or had he continued practice in Boscawen, where he first nailed up his sign, and where he might have won the approbation of friends and neighbors instead of meeting the special pleas and more special arguments of Jeremiah Mason, we might not have gloried in him as we have had such proud occasion to do. Ezekiel Webster, the beloved brother of Daniel, took Daniel's office in Boscawen, and settled down quietly upon a country practice, with a mixture of husbandry, land mortgages, town offices, care of the academy, and domestic cares and pleasures. There is full evidence that these brothers, though good scholars in college, had not the pride of scholarship of Mr. Choate and scholars of his time, when the first appointment for the graduating commencement was the first great ambition and event of the scholar's life. Daniel

Webster, though as good a scholar as any in his class, had no appointment, and Ezekiel received his degree while absent teaching school in Boston. With great talents, great power of acquisition, great love of books and learning, their home labors, country habits, and social life had little tendency to awaken in them, thus early, great expectations beyond earning money enough to repay the expenses of their education, and a competency to maintain a family in the style of good society of the time. Mr. Gore stimulated Daniel, upon his admission to the bar, to make a mark above country practice, and plant himself at once in Portsmouth, lest his great promise of success should be "lost or defeated" by delay. He went to Portsmouth, and lost no opportunity for professional success or political elevation. Ezekiel remained in Boscawen, a careful attorney, a manager of affairs, growing in wisdom and power, but lost no opportunity to make money, and diffuse among his neighbors social, domestic, and agricultural elevation. Distinguished and growing lawyers then followed the courts from county to county—"rode the circuit," as it was called; and Daniel rode the circuit, meeting at every court the strong men of the county in all the varied sharp practice of the profession. His great personal address and magnetism, his forensic power and grace, soon gave him marked distinction, opened the halls of congress to him, and invited him to Boston. Mr. Mason, before him, had practised awhile in Westmoreland, N. H., then in Walpole, before he ventured into Portsmouth, and after twenty years' practice removed to Boston, where he died. Mr. Webster said of him, "If there be in the country a stronger intellect, if there be a mind of more native resources, if there be a vision that sees quicker or sees deeper into whatever is intricate or whatever is profound, I must confess I have not known it, and I have not written this paragraph without considering what it implies." Again he said, "I am bound to say that of my own professional discipline and attainments I owe much to that close attention to the

discharge of my duties which I was compelled to pay, for nine successive years, by Mr. Mason's efforts and arguments at the same bar, in the constant displays of that power I had so much occasion to see and feel." Ezekiel had no such flint of rivalry, to strike fire from the steel-like sturdiness of his natural ability. I am quite glad, alumni, of this opportunity to give you Mr. Webster's opinion of his great associate in the Dartmouth college case.

Mr. Fletcher, of the class of 1806, removed his office from Salisbury, N. H., to Boston, and there found a field and honors equal to his talents and ambition. Mr. Choate (1819) also started an office in Danvers, and then stopped a while in Salem on his way to Boston. But Parker Noyes, of the class of 1796, seven years only after Judge Wilde in college, after practising two years in Warner, dropped down into the office of Thomas W. Thompson, whose pupil he had been and whose sister he had married, when Mr. Thompson removed to Concord. Mr. Thompson, graduate of Harvard, 1786, three years earlier than Wilde, became a lawyer and a statesman of great eminence in New Hampshire, and was a trustee of our college twenty years. Mr. Webster read law in part in his office in Concord. Mr. Noyes was a son of a clergyman in South Hampton, N. H., who was probably settled for life, and must have given to the son the almost universal sentiment of the time, that lawyers, doctors, and merchants should hold their places also for life, as did the farmers and mechanics. Mr. Noyes quietly occupied his small office in his front yard, was a great student in his profession, obtaining great local reputation as a lawyer, and refused a seat on the bench of the supreme court of New Hampshire. He was courteous, affable, argued his causes to court and jury with great logical clearness and brevity, was winning in address and persuasive in illustration,—in fact, he exhibited such mild eloquence, inflexible integrity, and great learning, that he rose to the leadership of the Hillsborough bar, and was equal to the highest demands of

the profession in any court of law. He passed away with local honors, without a deserved doctorate. Mr. Joseph Bell, of the class of 1807, opened an office in Haverhill, and remained there to the age of sixty, when he removed to Boston in expectation of professional rest from country practice, and to receive more select and important legal matters arising out of the great interests of large capitalists, commercial men, and manufacturers; but increased illness and death terminated his expectations in four years. He was also long a leader of the Grafton bar. He was a man of powerful physique, fine personal bearing, athletic, with a strong voice and nervous action, impressive and tenacious in the conduct of his causes, a severely diligent student and worker in his office, cordial, social, and respectful towards his brethren and the court. He possessed personal accomplishments, thorough learning, and professional skill to have placed him among the first lawyers of the city of his new home. Had he carried into effect his much earlier purpose, to seek a larger field of professional service, the highest honors had been within his reach.

I must beg your indulgence, alumni, in giving further expansion of the thought how much certain men in former times failed to cultivate their talents, and to reach the high places of usefulness and public approbation, from accidental or chosen low plane of demand upon their professional services and opportunities, allowing agreeable inactivity to supplant hard mental labor and high demand, from want of courage and ambition. As I have already named Ezekiel Webster, and as he has not received from us any especial recognition as an alumnus of the college, though a trustee for ten years, I call your attention to him in further illustration of the thought. The financial necessities of the family, as well as his own, demanded the immediate results of a very considerable practice in his profession. The high local reputation of the father, and interest of the people in the sons, undoubtedly prepared the way for the young men

to draw to their Boscawen office at once most of the small business of the towns around them, and soon Ezekiel found himself out of debt and on the way to independence.

Daniel thought more of reputation than money, and daily won new honors in his profession, and in political force and power. He was elected to congress in five years, and in six years more had defended the Kennistons in the famous Goodridge robbery, and had argued the Dartmouth college case, and soon after further distinguished himself in the constitutional convention of Massachusetts, and his oration on Bunker Hill and eulogies on the pilgrims and Adams and Jefferson.

Ezekiel, during all these years of Daniel's increasing power and glory, had been earnestly, though quietly, gaining wealth and knowledge; for he cultivated the law as a science, though he shrank from its higher fields of arguing cases to either jury or the court. He read history, and became profound in the legal elements of national politics and civil rights. But at the time of the last efforts I have named of his brother, he seemed to awake from his professional slumbers as if he had been examining himself before a mirror, and just then discovered how much he looked like his brother, how nearly identical in intellectual endowments, so like in person, face, eyes, voice, and culture, and to have said to himself, My brother's fame reflects back on me. I shall be inquired for. There is too great disparity between us now. He is accomplishing distinction, and I am doing nothing. I have like powers, but have not cultivated them. I can not only honor him, but will honor my father and myself. I will arise and duplicate him in other resemblances than mere good looks and good intentions. I followed him in college: I am independent in my means of living, and can now afford to follow him again. I will shake off my timidity and inactivity, and will bring to the front the elements of power and distinction we have in common. Whether or not such impressions, such purposes, and such uplifting, such family pride,

came over him or not, from the time that the great public recognition of Daniel Webster's scholarly powers was superadded to his great claims as a lawyer, to which I have alluded, Ezekiel sprang for personal elevation and distinction, and was rapidly gaining due appreciation from professional men of his great powers, long dormant, but promising a distinguished future. The curt criticism of Daniel,—"Zeke, you run too much to land,"—was now to produce mutual rivalry with men of highest culture and position; and the four years from those orations to his death raised the highest expectations of his future among his personal friends and the public. Hear, now, alumni, what was said of him by those who knew him best and mourned him most.

In the first place, Daniel said his father was the handsomest man he ever saw except Ezekiel, who appeared to him the finest human form he ever laid eyes on. A writer in one of the public journals, who knew Ezekiel intimately, says Prof. Sanborn, said,—"The image of him that now presents itself is that of a magnificent form, crowned with a princely head, that in his last years was thickly covered with snowy hair. His countenance was open as the day; his heart was warm and affectionate; his manners kind and courteous." "He was nearly six feet in height, finely proportioned, with a very commanding presence," says the Professor, and "there existed between the brothers a remarkable unity of opinion, sentiment, and affection." "They loved each other with the intensity, fervor, and constancy of a woman's devotion," "and were mutual helpers and advisers." Judge Nesmith says of him, that, "As to voice, Daniel's was the most sonorous, clarion-like, unless when Ezekiel exerted himself; then a great similarity appeared. As to eyes, Ezekiel's were black, but not as large as Daniel's. He was deficient in self-courage, or confidence in himself. He argued but few cases in court until the last few years of his life. After Fletcher and Noyes left the bar, in this region he was entitled to prominence, and was

acquiring legal fame every day during the last four or five years of his life."

Another writer in a public journal says,—"He was an eminent man. His extraordinary talents and great private worth placed him in the front rank of his profession, and, indeed, in the front rank of men. His wisdom and solid judgment in all the affairs of men commanded the respect and admiration of all. He was often in the senate and assembly of New Hampshire. There was no man living for whose judgment and advice Daniel had so much respect as for that of his brother Ezekiel. It is said of him, that all he ever asked was the approval of Ezekiel. The applause of the multitude, the laudations of the press, the flattering attention of an entranced senate, all dwindled to nothing when compared with the silent but certain approbation of Ezekiel.

"When, after his reply to Gen. Hayne, in the senate, his fame rose to its zenith, and his praises were sounded wherever the English language was spoken, Ezekiel had departed this life. Then Daniel, as if doubtful of it all, was heard to say,—'*How I wish my poor brother had lived till after this speech, that I might know that he would have been gratified with it!*'

"On the 10th of April, 1829, while Ezekiel was in court at Concord, in the midst of one of his most brilliant forensic efforts, death aimed his fatal dart, and he fell dead at the feet of the judges. He died from a disease of the heart, at the age of 49, beloved and lamented by all who knew him, and at that time by far the most worthy and influential man in this state."

"Mr. Webster was one of the ablest lawyers of the state, a distinguished legislator, and left a rich inheritance in fame for his orphan children. He stood at the head of the Merrimack bar, by every member of which he was honored and esteemed for his courtesy, talents, and integrity. The

void created by his premature death will not soon be filled." —*N. H. Journal.*

Judge Wilde died in Boston, June 22, 1855, at the great age of 84, where he had lived twenty-four years, his wife having deceased June 6, 1826, twenty-nine years earlier. He had vacated his seat by resignation five years before his death, on account of increasing muscular infirmities. One of his sons, George C. Wilde, Esq., graduated at Bowdoin college, read law, and was the accomplished clerk of the supreme court of Massachusetts for many years to his death. One daughter married the late Hon. Caleb Cushing, the distinguished lawyer, judge, and diplomat. She was a lady of marked literary acquirements, and very beautiful, but died childless after a few years of married life. She travelled with her husband upon the continent of Europe, and sent letters to her father from France and Spain, which were printed in two volumes, and are descriptive of her sight-seeing, Spain being then a rather untravelled country by Americans. Mr. Cushing mourned her loss to his death.

I close this notice of our venerable and honored brother in transcribed notices of him, after his resignation and his death, by the press, members of the bar, and his brethren at the court.

The *Worcester Transcript* said,—"Judge Wilde was almost the last link that connected the bar and the court of Massachusetts with the practice of the last generation, and the traditionary fame of the bright luminaries of the profession in the latter part of the last century and the first quarter of the present. It is sixty-five years (in 1855) since he was first admitted to the bar. It is forty years since he took his seat upon the bench. In his practice at the bar he won an honorable reputation, and became a leader. He was the cotemporary of Parsons, Dexter, Parker, Story, and the great lawyers whose triumphs, as rehearsed to us by their cotemporaries, eclipse the glories of their successors on the bench. He was, for some time before he left it, the

object of peculiar regard and affection, as the last survivor of those great judges, who, in the last century and the present, built up, upon the broad and sure foundation of the common law, a noble system of jurisprudence, enlarged and extended to meet the necessities of commerce, and adapted to the exigencies of the American system. Among the great and able magistrates with whom Judge Wilde was associated upon the bench, he was always conspicuous, admired, and loved, for the possession of some admirable and rare faculties which singularly qualified him for the high office of expounder of the law and minister of justice. He had acquired an extensive and most accurate knowledge of the common law, in all its numerous and intricate titles. The law of real property, then the most important branch of the law of New England, he had studied under the greatest masters, and he stood, confessedly, *facile princeps* in his mastery of its wearisome and abstruse doctrines. He had a most admirable and exact acquaintance with the intricacies of special pleading, now become obsolete law. But he was not wanting in his knowledge of the more liberal and expansive doctrines of the commercial law; and the whole bench and bar admired the facility with which he received and administered the new and unexplored science of equity. As a judge, he was, moreover, patient, accurate, faithful, clear, and logical. Labor did not fatigue him; neither did time and trouble sour an affectionate and generous disposition. He was always courteous to his brethren and the bar; kind and affable to the young and aspiring; just and faithful to suitors in his court."

The *Boston Daily Advertiser*, after speaking of his early and professional history, and the public offices he filled and honored, says,—"He was also one of the delegates to the celebrated Hartford convention, and was the last survivor of that distinguished assemblage, which possessed an array of talent seldom, if ever, surpassed, and which has been more unjustly abused than was ever any political body in the coun-

try." "Judge Wilde received the degree of Doctor of Laws from Bowdoin college in 1817, and the same honor was conferred upon him by Harvard college in 1844, and by Dartmouth college in 1849. He was also a member of the American Academy of Arts and Sciences. His judicial career was distinguished by great legal learning and stern integrity. In private life his character was unblemished and exemplary."

Upon the retirement of Judge Wilde, the members of the Suffolk bar convened, Nov. 9, 1850, and passed resolutions, which were presented to the court by Benjamin Rand, Esq. Before proceeding to offer the resolutions, he addressed the court (somewhat abridged by me) as follows:

"It is now more than thirty-five years since Mr. Justice Wilde was promoted to the bench of this court. From that time, during a period of judicial service of no ordinary length, the members of the bar, in the daily exercise of their profession, have had occasion to witness, with admiration, the promptness, the untiring assiduity, the fidelity, the impartiality, the devotedness to the public service, and the great learning and ability which that eminent judge has at all times manifested in the discharge of the arduous and important duties of his official station. We have looked up to him, for some time, with peculiar regard and reverence, as being the last survivor of those eminent magistrates whose judicial labors, in the earlier stages of our progress in judicial science, contributed to build up, and from time to time improve, and adapt to the various exigencies of our peculiar civil institutions and laws, a consistent system of jurisprudence founded and framed upon the basis of the common law, recognized and adopted when our state constitution was formed."

"By the early education of Mr. Justice Wilde in the sound and wholesome learning of that class of jurists now emphatically denominated the old school, his mind was trained and disciplined, and richly stored with legal science,

in a manner which peculiarly fitted him for the judicial office, the duties of which he afterwards discharged with such conspicuous ability and such universal approbation. By the course of his early studies, and by extensive practice at the bar with eminent lawyers, his cotemporaries, of great attainments in the recondite learning of the day, he acquired, before his elevation to the bench, a deep and thoroughly accurate knowledge of the great principles and rules of the common law in all its various ramifications. The law of real property seems to have been one of his early and favorite studies. The profound attainments of Mr. Justice Wilde in this department of jurisprudence, and his great familiarity with all its abstruse and often arbitrary doctrines and rules, growing out of the institutions of a former age, but so interwoven now with our jurisprudence that they cannot safely and conveniently be discarded, enabled him, while he sat on the bench, as your honors well know, to expound and administer, with singular ability, the principles of this important but intricate and difficult branch of the law. This professional training gave him preëminence in another branch of legal science. He cultivated a habit of close and logical reasoning, which, with his remarkable acuteness and power of discrimination, gave him great eminence in special pleading, which is so admirably calculated to separate the law from the fact, lessening the labors of the court and jury in trials at common law. But this excellent magistrate never allowed a regard to forms and technicalities to gain a mastery over his sound judgment and common-sense. We have witnessed more recently with what facility he embraced and how ably he administered the broad and liberal doctrines of equity, and how eminently he succeeded in illustrating, expounding, and rendering familiar to us this comparatively new and most important branch of the jurisdiction of this court. In fine, the bar have regarded his administration of justice in this court as eminently serviceable to the community. By the faithful

discharge of his official duties, without fear, favor, affection, or the hope of reward, except what his small annual stipend, an approving conscience, and public gratitude may afford, he has contributed, with his brethren on the bench, to inspire confidence in and respect for our civil institutions, our courts of law, the law itself, and all those who administer it."

The resolutions were read to the court, but are omitted here, as they only affirm the beautiful rehearsal of the remarkable characteristics of Judge Wilde's official duties by Mr. Rand.

Chief-Justice Shaw remarked, that "The retirement of such a judge, after a judicial career almost equally unexampled for its length, its brilliancy, and its purity, is an event well fitted to make us pause and reflect; and whilst we pay a just and grateful tribute of respect to legal eminence and high judicial excellence, we may gather some wisdom and strength for the improvement of our own. Commencing the study of the law at a period when the law of real property was of the highest practical utility and importance, his wonderful mind was early devoted to that system of rules founded deeply in the principles of the common law, which still, after all its changes and modifications, lies at the foundation of our law of real property. Trained in the school of special pleading, when the keenest power of legal discrimination was in constant requisition in distinguishing the plausible from the sound; practising in a part of the commonwealth where great interests were drawn in question depending on the law of real property; when the highest honors and rewards of the profession awaited the practiser who was best versed in the knowledge and practice of this branch of the law,—his mind had become so familiar with its minute and apparently subtile distinctions that he could apply them promptly, like simplest principles, to complicated cases. In this department, his learning, judgment, and experience were valued by his associates

with a confident assurance seldom, if ever, disappointed. A practice of twenty-four years at the bar, and his judicial labors during the long period of thirty-five years, have made his name and his reputation conspicuous amongst living jurists. After a most intimate official and personal association with the last remaining judge with whom I was first associated in this court, one on whom I could rely as a monitor, guide, and friend, under all circumstances, I consider it a privilege to say that I must ever regard Judge Wilde with feelings of affectionate respect, which, whilst memory lasts, time can never obliterate."

"The members of the Suffolk bar, having heard of the death of the Honorable Samuel Sumner Wilde, late one of the justices of the supreme judicial court, at the close of a long, honorable, and useful life, in the full enjoyment of all his mental powers, and blessed with all 'that should accompany old age,' and being moved to express their deep and strong sense of his eminent ability as a magistrate and great worth as a man; therefore,—

"*Resolved*, That the estimate of the judicial character, services, and fame of Mr. Justice Wilde, publicly expressed by this bar on the occasion of his retirement from the bench, and placed on the records of the court, embodies our best considered opinions of this eminent jurist; that they are suggested and strengthened by every new recurrence to his written judgments, and every new recollection of the particular incidents, and the noble aggregate of that strenuous, brilliant, and upright judicial life; that better, even, than when our reverence and admiration followed him, for the last time, from these scenes which he had so long helped to illustrate, we seem to know, and, more fondly than then, and more proudly, as by the side of his grave, to record,— that the judicial labors of Mr. Justice Wilde, extending, with scarcely the indulgence of an absolute vacation, over a period of more than thirty-five years, have been performed with admirable faithfulness, and with conspicuous ability;

and that they have contributed in an eminent degree to settle and enrich the jurisprudence of the commonwealth; to invest the supreme magistracy with respect, and the law with reverence; to establish justice, restrain crime, and to ascertain, vindicate, and assure the civil rights and liberties of the people;—that in that review of his services, virtues, qualifications, and traits of personal and official character and mind to which the occasion naturally turns our thoughts, we appreciate, and record with special admiration, his exact and deep knowledge of the common law of real property, the fruit of his earliest studies under our great teachers of that learning; his later mastery of the theory and practice of equity; the rapidity as well as soundness of his perception of legal truth; the fidelity, quickness, and capaciousness of his memory; the sagacity, firmness, and kindness of his heart; the habits of despatch, and the instantaneous command of the law, both of evidence and of principles, with which he presided over the trial by jury; his absolute and remarkable impartiality towards all the practitioners before him—too just and too manly for antipathies or favoritism; and, to sum up all, his devotion to every duty of his office, which seemed to gain strength to the last hour of his judicial life, and to which all his tastes and all his enjoyments were kept ever subordinate.

"*Resolved*, That the private and personal worth of this eminent magistrate was in strict harmony with his official merits, and, indeed, formed part of them. His bearing upon the bench indicated the man. If he loved the law, it was because by it truth and justice were vindicated and maintained. Simple in his tastes, of industrious habits, of a cheerful spirit, of warm domestic affections, and strong religious faith, he never lost his interest in life, and nothing of him but his body grew old. He was frank, direct, calmly courageous, and of unalloyed simplicity—caring as little to conceal what he was as to affect what he was not. His intellectual tastes were healthy, and his legal studies had

not closed his mind to literature, so that when the burden of accustomed toil was removed he found constant delight in the reading and discussing of good books. His long and valuable life was crowned by a serene and beautiful old age, brought to a close by natural decay, and released by a touch so gentle as to leave more of gratitude than grief in the hearts of those who stood by his side."

ANDREW SALTER WOODS, LL. D.,

CLASS OF 1825.

BY HON. HARRY BINGHAM, CLASS OF 1843.

APPROPRIATE honors, at fit time and place, are due from the living to the dead. Brief reviews of the lives and characters of deceased graduates, as a part of the exercises at a regular anniversary of the college, cannot be regarded as inappropriate, especially when such a review portrays a life and character worthy of study and imitation. An opportunity to be taught is given thereby, while at the same time a proper tribute is paid to the memory of departed excellence.

Andrew S. Woods must be classed among the eminent deceased graduates of the college. Born in the year 1803, he was graduated in the class of 1825; and, having studied law and been admitted to the bar, he began the practice of his profession in the year 1828.

He continued in a successful and lucrative practice until the year 1840. In October, 1840, he was appointed one of the associate justices of the superior court of the state of New Hampshire, and held that position until March, 1855, when he was appointed chief-justice of that court. He held the last-named office until the court over which he presided was abolished;—not on account of any fault of his in that dignified position, or of his associates, but by reason of one of those wild and undiscriminating political tornadoes that

sometimes sweep over the country and upset everything and everybody, regardless of what ought to command respect and of what is really meritorious. He then resumed the practice of the law, and was more or less engaged therein until his death, in June, 1863.

In estimating the character of a man who has made his mark on his day and generation, the first inquiry is, What are the peculiarities that distinguish him from ordinary men?

In the case of Judge Woods, I should say that the prominent peculiarities of his mind were an accurate discrimination, and a judgment that seldom erred. It was this that enabled him to discern in all his undertakings what to do, and what to omit to do. It was this that made him a safe adviser for his clients, and enabled him never to mistake the kind of action he ought to bring, and never to mistake the law applicable to the facts in his case. It was this, combined with industry and strict integrity, that enabled him to be successful in the management of his private affairs, and to make pecuniary investments that were safe and profitable. It was this, combined with a vigorous sense of justice, that enabled him while on the bench to search out and find the right with promptness, however complicated, conflicting, or voluminous the testimony might be. It was this, combined with firmness, that impressed upon the community in which he moved, and upon everybody with whom he came in contact, the idea that he was a strong man, and that it would be safe to follow where he would lead.

I may remark here, generally, that his domestic relations were most congenial; that at his death he left a worthy widow and affectionate children to deplore the loss of a kind husband and an indulgent father. I will not particularize on this point, but confine my special comments to his life and character, as manifested outside of the domestic circle and as known to the public.

The public knew him at the bar, on the bench, and as a

citizen ; and they saw him in each of those positions discharge his duties ably and fairly.

As a lawyer, his cases were always well prepared. The law was carefully looked up and well considered. The evidence was sifted, and all impertinent and immaterial matter rejected. Only what would tell on the matters in issue was put before the court and jury. He never sought to dazzle the court by large displays of legal learning, but he always knew all the law needed for the case in hand ; and he had a very terse and vigorous way of expressing to the court his views of the law.

Nobody ever claimed that he was a brilliant advocate. In fact, he does not seem ever to have studied what are understood to be the peculiar graces of oratory, or to have cared about them ; but he had a very clean-cut way of stating the issues in the cause on trial, and of narrating the evidence bearing on those issues, so that nobody could help understanding.

He was a successful lawyer, and he won his success in the legitimate way,—by hard knocks and honest labor, directed by keen discrimination and sound judgment. His brethren at the bar often called on him for assistance in doubtful and intricate cases, and always found his suggestions valuable, and every legal opinion he might give pretty sure, on trial of the cause, to be established as the law. Always in earnest, and faithful, his client's cause was his own until it ended.

It was on the bench, however, that his peculiar abilities best fitted him to win distinction. In that position he gave universal satisfaction. Litigants and counsel always felt assurance that their cases before him would be thoroughly and impartially tried. He was prompt in seeing and appreciating the exact questions of law and fact upon which the case must turn. He was patient in listening to all that could be said upon the one side or the other, and in investigating all the authorities that could be found bearing on the case. His decisions were rendered with reasonable promptness, and gen-

erally were acquiesced in, or, if reviewed, were hardly ever reversed. Parties, after a trial before him and a decision rendered, whether they won or lost, always felt that he had tried their case ; that they had been fully heard, and that the best result had been reached which a strong mind, guided by sound judgment, after patient consideration, could attain.

He was specially acceptable as the presiding justice at a jury trial. In this position very few of the most eminent judges equalled him. He was always self-possessed, and never made nervous and irritable by the annoyances of the most protracted trial. Very early in the trial he would apprehend the real issues, and be able to discern the relevancy or irrelevancy of the evidence offered, and be prepared to rule thereon with promptness and accuracy. Business under his direction always proceeded right along systematically and in order. His rulings were almost universally sustained. Very few verdicts obtained at trials over which he presided were ever set aside.

He was uniformly courteous ; and at the same time he carried himself with firmness and dignity, so that matters in his court proceeded pleasantly and with due decorum. In the administration of justice, he ruled himself with a strong hand, and held absolute dominion over his passions. He was capable, at the proper time and place, of boiling over with righteous indignation ; but he was always calm on the bench. He had strong dislikes for some persons, and equally strong friendships for others ; and yet the keenest observer would not be able to detect the slightest difference between his demeanor while on the bench towards the lawyer to whom outside of the court-house he would not speak, and the lawyer with whom he was on terms of intimate friendship. He gave the same patient hearing to the arguments of both, and weighed what made for one and the other in the same impartial scales. He was absolutely blind to everything except the inquiry, Which way, upon the law and the

evidence, do the scales of justice incline? In guarding against favoring his friends, or doing injustice to his enemies, he never lost his balance and leaned the other way. He was strong enough to *stand straight.* In trials before him, both friend and foe got justice as equally and exactly as a clear intellect and a sound judgment could measure it out to them.

He never made large displays of legal learning. He did not seem to have any learning of a merely ornamental character. When he cited an authority, it was one that illustrated the point to which he cited it. His knowledge was for use. He always knew all the law that the case or the occasion required. His legal knowledge seemed to lie undisturbed in some private storehouse of the mind until it was wanted for actual use. It was then brought out; and his statement and application of it were seldom disturbed. He was familiar enough with all the sources from which a knowledge of the common law is derived to make his legal opinion a very safe guide. None of the eminent jurists who were his cotemporaries could be relied upon more fully in this respect. He had a very accurate perception of the relations between different things or ideas,—of their adaptation or non-adaptation, of their consistency or inconsistency. In short, he was endowed with very good common-sense. He was quick to see the right: his sense of duty constrained him to pursue it. His steadiness of purpose enabled him to stand to his work until it was accomplished.

The subject of constitutional law was within the scope of his habitual thoughts and inquiries. He abhorred a government with absolute power, and had very positive convictions as to the necessity of restraining arbitrary power by constitutional limitations. He was a great admirer of our peculiar system of free government, by which all local matters are left to be controlled by the local government, while matters involving the general welfare are alone entrusted to the federal government.

If circumstances had placed him on the bench of the supreme court of the United States, he would have been the right man in the right place. His keen discrimination, his sound judgment and sterling patriotism, would have made him a fit arbiter to sit upon those constantly recurring questions as to the precise boundary between state sovereignty and federal supremacy. The fact that he did not serve in that position is the misfortune of the people rather than his. He did his work, and demonstrated what he was in the field allotted him. His character is the same and his memory as dear as they would have been if he had occupied a more elevated place than he did.

Men like him must always be the chief reliance to preserve the well-being of a country where the popular will controls. Men like him, however humble or exalted in station, are blessings to their friends, guides and counsellors for the community in which they live, and pillars to uphold the state of which they are citizens. Death does not end their usefulness. They leave their good works and examples behind them, to be carried forward on the stream of time to the countless generations of the future.

Andrew S. Wood was an upright and patriotic citizen, an able lawyer, and an incorruptible judge. He has left behind him a record highly prized by his friends, honorable to the college that was his *alma mater*, and to the country that gave him birth.

Peace to his ashes!

"The sweet remembrance of the just
Shall flourish when he sleeps in dust."

MATTHEW HARVEY, LL. D.,

CLASS OF 1806.

BY GEORGE W. NESMITH, LL. D., CLASS OF 1820.

HE was born in Sutton, in this state, June 21, A. D. 1781: he died at Concord, April 7, A. D. 1866, nearly 85 years of age. His father's name was also Matthew, who was born at Amesbury, Mass., in 1750, and removed to Nottingham, N. H., thence to Sutton, in 1772, where he purchased a farm, and there became a prudent and successful farmer, acquiring not great wealth, but a competence for the support and education of his family. He was also an influential magistrate, and was the first representative of Sutton under our state constitution of 1793, and held this office, by annual reëlection, until his death in 1799.

Judge Harvey was the second son of a family of five sons and two daughters, all of whom he survived. He was prepared for college chiefly by the late Dr. Samuel Wood, of Boscawen. To the early private instruction and good advice of this worthy divine, very many of our eminent men are much indebted.

Judge Harvey graduated at Dartmouth college in 1806. He maintained a high standing in his class, that numbered among his associates such men as Judge David Cummins of Salem, Judge Richard Fletcher of Boston, Judge Albion K. Paris of Portland, Gen. Samuel Fessenden of the same city, Rev. Joshua Dodge, Rev. Asa Rand, Rev. Cyrus Mann,

and Edmund Flagg, who was a distinguished scholar, and died early.

He studied the profession of law with Judge John Harris, of Hopkinton, and was admitted to the bar in 1809; commenced the practice of his profession at Hopkinton the same year.

On the 4th of July, A. D. 1811, Judge Harvey delivered an oration at a public celebration of the Declaration of Independence in the town of Henniker. This was published. We have examined it. It is valuable, as prefiguring the state of public feeling anterior to the War of 1812. It assigned various reasons why we should wage war with Great Britain, and nearly as strong reasons why we should treat France in the same way; for both nations were then plundering our ships and destroying our commerce, under the operation of the British orders of Council, and the Berlin and Milan decrees of Bonaparte.

This production had a tendency to increase the popularity of Judge Harvey. In March, A. D. 1814, the town of Hopkinton elected him as their representative to the legislature. He was reëlected to the same office the next seven successive years, terminating with 1821. During the last three years of his service he was speaker of the house of representatives.

He was next elected a member of congress, serving four years. His term of service closed with 1825. In 1824 he voted with his colleagues from this state for John Quincy Adams as President of the United States, the election having devolved upon the house of representatives, under the United States constitution, there having been no choice made by the people. Retiring from congress, he was forthwith elected state senator from his district for three successive years. In the years 1828 and '29 he was elected a member of the executive council for the Hillsborough district. In 1830 he was elected governor of this state; and, before his first year's service expired, in the spring of the

year of 1831, he was appointed by President Andrew Jackson judge of the United States district court for New Hampshire. This office he continued to hold during the remainder of his life.

Judge Harvey's successful career beautifully illustrates the true theory of *rotation* in office,—meaning that you, fanned by the breeze of popular favor, roll along from one good office to the possession of another still higher and better. Few men in this state have enjoyed the public confidence to an equal extent. The several offices, the duties of which he discharged, came to him without effort on his part. Justice Clifford, of the United States supreme court, who knew him intimately, said of him,—"Few men of this state have enjoyed greater honors, and none have gone to the grave with a more general acknowledgment of their integrity and purity of life." Judge Foster, of Concord, in a well-written eulogy upon his neighbor and friend, endorses the sentiment advanced by Justice Clifford, and adds "that it contained the key of Judge Harvey's worldly success in life," and "that these traits of character were adorned and made attractive by their combination with an unvarying demeanor of kind and gentle courtesy."

To these genuine qualities we may be allowed to add *his constitutional good-nature*, thus forming a good basis for that indispensable quality, which should exhibit itself in all good judges: we refer to the *virtue* of *patience*.

In strictly legal acquirements, Judge Harvey was doubtless excelled by many others of his profession; but it may be truly alleged, that to his own native good sense and accurate judgment he superadded sufficient learning to enable him to discharge honorably and acceptably all the duties belonging to the several official stations occupied by him during his life.

We saw him often while occupying the speaker's chair, in the fall session of the legislature in the year 1820. This was a legislature distinguished for its ability, and at a time

when party made but slight claims upon the time and attention of its members. Again, we saw him frequently as a presiding officer of the senates of 1825, '26, and '27; and we can truly assert that the duties of these offices were discharged with singular impartiality and success. While adhering to the right of advocating his own political sentiments upon suitable occasions, yet we never knew or heard of him, as a public officer, to give offence to a political opponent by the use of any severe, censorious, or offensive language. On the contrary, the tendency of his conduct and influence was such as to allay party violence, and to promote harmony and peace in the community where he resided.

The natural bent or inclination of Judge Harvey's mind was to do equity. In the year 1825 we had a test of his willingness to do exact justice to a laboring woman in a case where neither the common nor our statute law furnished an adequate remedy, and where he had already given a legal opinion founded upon the strict law of the case. We state the facts to show the candor of the judge. Mr. D., of Concord, gave a deed of his homestead farm to his son, reserving to himself and wife a life estate of the whole of it. The son married a lady then resident in Andover in this state, and, after living with his parents about two years, he sickened and died. After the son's death, the widow found she had no legal right of dower, and that her husband's estate was likely to prove insolvent, he having mortgaged the reversionary interest in the farm to secure his parents. The prospect of getting anything out of the estate, by any legal process, became quite doubtful and gloomy. The widow stated her difficulties to us. We told her her only hope of relief was an appeal to the tender mercies of the old people. She requested us to go with her to this tribunal.

We repaired to Concord, accordingly, and found all the writings to conform to the aforesaid statement of facts, and that Judge Harvey had made them. The father informed us that he had recently consulted Judge Harvey

upon the merits of our widow's claims. The judge had informed him that she was entirely barred from dower, having no life estate in the farm, and that his son had died leaving not sufficient personal estate to pay his just debts, and his estate would prove insolvent. The widow insisted that she had labored for more than two years, doing the cooking, washing, and the other hard labor for the whole family, including the parents, and for this service she must have pay. The old gentleman finally offered to make Judge Harvey arbitrator of her claim.

1991934

Accordingly we prepared a short submission for this purpose, which was duly signed by the parties, and forthwith repaired to Hopkinton, and placed the agreement in the hands of Judge Harvey. Both parties were heard at once. The widow stated her claim as follows: That the father and her husband, and one other young daughter, had generally composed the family; that the mother was infirm, frequently sick, and unable to do any labor; and that the hard labor of the family had devolved upon her, and that she had faithfully performed this servile labor for more than two years; that they would have been obliged to hire other female labor if she had been elsewhere. This statement was substantially assented to by the father. The son had contracted to carry on the farm: nothing was said about furnishing the necessary labor of the house. Under the circumstances of the case, Judge Harvey remarked that the widow had an equitable claim to some compensation, and ought to be rewarded according to the benefit rendered by her to the estate. He accordingly awarded that the father should pay the widow $1.50 per week, amounting to more than $200, which was paid by the father. This widow, many years afterwards, became the second wife of John Taylor, the *fidus Achates* of Hon. Daniel Webster; and this award formed the nucleus of a considerable estate, which she left to her surviving heirs during the year past.

At different periods during Judge Harvey's life, we have

had some means of learning the character of his mental powers and habits of thought, his sensitive nature evincing strong feelings, and opposition to all wrong, oppression, or fraud. These opportunities of knowing him were furnished by our connection with him while trying three or four important causes as a referee; also as acting as counsel in some other cases in his court.

The jurisdiction of his court did not embrace so much business formerly as is found in the district court in modern days. The large increase of capital invested in manufacturing in our state, also in railroads; and the modern system of banking, under our acts of congress; and the mode adopted for collecting our internal revenue; the management of our laws regulating patent rights or inventions; our domestic and foreign commerce; our shipping interests; crimes committed upon the sea; the regulation of our post-offices, and the crimes of post-masters; and more especially our bankrupt laws,—all combined, are tending to increase the business materially both of the district and circuit courts in our state. During the operation of the bankrupt law, enacted during the days of John Tyler, we had occasion, at different times, to attend Judge Harvey's district court. We recollect that questions of importance arose, and were discussed and disposed of, involving the proper construction of statute law and modes of practice, appertaining more especially to the bankrupt law and the law regulating patent rights. These questions frequently required ability, discrimination, and research to settle them. We recollect they were so decided, after due deliberation by Judge Harvey, as to give satisfaction to the parties, and without appeal to a higher tribunal.

Our experience and observation in reference to Judge Harvey's decisions led us to the conclusion that it was his uniform desire and true intent, in all the cases submitted to him, under the power of the law applicable to the facts embraced therein, to investigate thoroughly and patiently the

merits of the several questions, and to render such decisions as would do full justice to the parties, and such as would generally inspire confidence and satisfaction to all in interest.

Judge Harvey disliked what is recognized as *sham practice,* as every honest judge should. He remarked to us, on one occcasion, that he hoped the time would soon come when courts would not be troubled with motions and pleas merely dilatory in their character, denying to the court the liberty and power to reach the heart of the case before him at once, and to settle it upon its true merits. He trusted that counsel would always feel it their conscientious duty to unite with the court in the avoidance of all subterfuges and all contrivances that might tend to defeat or delay strict and full justice.

So long as the aforesaid bankrupt law was in force, the office of district judge in this state was no sinecure, for its duties required much labor, and a critical judicial investigation of numerous cases.

The experience of the *fifty-two years*, during which Judge Harvey occupied his various offices, enabled him to form many acquaintances with prominent men in this and other states, and with business men of various classes, and to become familiar with their pursuits, manners, habits, wants, and peculiarities. He in this way became a good judge of human character, which proved useful to him in his profession.

He had good *conversational powers*, and was an extensive reader, especially of books of a historical and literary character. He could give us an accurate biography of many men of influence who acted their parts on the early stage of this century. His memory had stored up many interesting historical events that occurred in his youthful days, and a large fund of *anecdotes*, which he knew how to relate for the edification or amusement of his friends and hearers.

He was one of the founders of the New Hampshire His-

torical Society, and did much to advance its interests. He held the office of president of this society for a number of years.

In 1824 he was president of the Merrimack County Agricultural Society. He delivered an instructive address before the society at one of its annual fairs holden at Boscawen.

Judge Harvey spent the last twenty years of his life at Concord. During the many years, when he resided at Hopkinton, he was regarded as one of her most active, liberal, and energetic citizens, always doing his part to sustain the cause of education, and other institutions favoring good morals and the general welfare of the people. An aged citizen of Hopkinton denominated him as the *town peacemaker*, for he was more often selected than any other citizen as arbitrator to adjust neighborhood difficulties; also to execute offices of trust, as guardian, trustee, executor of wills, &c. In these he was found faithful.

During the twenty years he was in the practice of the law in Hopkinton, although he transacted a great amount of business, yet his charges for his services were so moderate that he had amassed but little property before his appointment to the office of judge. We had this account from one of his friends, who had knowledge of his financial affairs.

Judge Harvey was a strong friend of his *alma mater*, and was honored by one of her highest honorary degrees in 1855. His beautiful portrait now graces one of her halls.

All these excellent traits of character, which we have here recounted, were crowned by a strong and consistent religious faith. This shone brightly, illustrating in his latter days a long and useful life, yielding a calm and peaceful serenity to the soul in the hour of death. Rev. Dr. Eames preached his funeral sermon, from the text, "The path of the just is as the shining light, which shineth more and more unto the perfect day." Dr. Eames, among other things well spoken, remarked "that the tongue of the most eloquent preacher can never utter a *sermon* half so impressive, half

so winning, as did he exhibit in the beautiful consistency of his daily Christian walk. In his public and private life, at home, and in the church of God, he was a living epistle, read and known of all men."

In May, subsequent to his death, the members of the bar, assembled in the court-room of the U. S. circuit court, then holding its session in Portsmouth, through their committee, composed of Messrs. Hackett, Eastman, and Foster, reported appropriate resolutions expressive of their respect to the character and memory of the worthy deceased judge. We give one of the resolutions then reported by the committee:

"*Resolved*, That in the death of the late Hon. Matthew Harvey we mourn the loss of an able, upright, experienced, and courteous magistrate, who, for nearly half the period since the organization of the federal courts, has faithfully and acceptably performed the duties of justice of the United States district court for the New Hampshire district, and who, through a long life of varied usefulness, was beloved as a man and revered as a judge."

The U. S. district attorney presented the resolutions of the bar to the court. Mr. Hackett sustained them in an appropriate speech. Justice Clifford responded in eloquent terms, and ordered the resolutions to be entered on the records of the court.

In June, immediately following the death of Judge Harvey, Judge William L. Foster, the respected friend of the deceased, read before our State Historical Society, at its annual meeting at Concord, an able and comprehensive sketch of the life and character of the much lamented judge. This interesting memoir of Judge Foster was published, and may be profitably consulted as furnishing a full and beautiful tribute to the memory of his departed friend. We have drawn from this fountain many facts and ideas well illustrated by him.

Finally, we present to the alumni of our institution the model of a good and just man, whose example may be im-

itated and safely followed by all of us. Our institution may have sent out some men stronger in intellect and of more profound acquirements, but few, however, who have achieved more for the good of themselves and society generally.

We present you a man who was *great*, under Pope's definition of this word,—

"Who noble *ends* by noble means obtains;"

one fitted to be our guide, and a wise counsellor, not only in our professional stations, but in the discharge of all our duties in life.

WILLIAM HENRY BARTLETT,

CLASS OF 1847.

BY HON. ISAAC W. SMITH, CLASS OF 1846.

MY distinguished brethren, speaking for this venerated college, honor to-day the memory of those of her sons who died when their life-work was done, laden with judicial honors; who lived their allotted three-score years and ten, and more, and then passed on to a higher life.

In filial obedience to the command of our fond mother, I return to her presence to give formal expression to her grief for the loss of one who went down to the grave in the noontide of life, but not before he had reached the same high position, and had won the admiration and respect of the commonwealth whose interests he served so well.

This ancient school of learning would, indeed, manifest a strange indifference to the memory of its honored dead, if it failed to put on public record its estimate of their lives and character, and to consign to history their memories, to be cherished as long as filial pride and affection shall stir the emotions of the heart.

Beneath the shadow of Kearsarge mountain, in the historic town of Salisbury,—the home of the Websters and Eastmans and Bartletts and Pettingills,—William Henry Bartlett was born, August 20, 1827. He was the youngest child of Samuel Colcord and Eleanor Pettingill Bartlett. His father was noted for his vigorous mind, his great activity, and strict integrity: his mother, for the sweetness

of her character, her gentleness and dignity of manner, and strong, womanly sense;—both, for their pure Christian lives and characters. He was the nephew of Ichabod Bartlett, of Portsmouth, the cotemporary at the bar of Mason and Smith and Webster, and the peer of either in learning and eloquence. The son of such parents could not fail to receive the impress of their virtues and characters. He was recognized by all as an interesting child, and a boy of great promise, both in mind and character. Without precocity, he was singularly quick of apprehension, and equally patient and painstaking. While in the common-school, and afterwards at the academy, he would come home with his arithmetic or algebra, and, of his own accord, sit by the hour working at his problems, till it was found necessary to send him to his sports. He never lost that habit of protracted toil to the end of his life. Perhaps the end was hastened by the excess. Meanwhile, from his childhood, his scholarship was of the highest order. In his earlier school-days he was associated in classes with much older persons than he, and proved himself fully their equal. But neither then nor afterwards did his proficiency create in him the slightest aspect of arrogance or conceit; but he remained to the end as modest as he was bright and strong.

His childhood and boyhood were marked by an extremely kind, obliging, and winning disposition. At home he was helpful, and uniformly cheerful and obliging. It was a marked and peculiar trait in his character, and steadily deepened into that thoughtful kindness which in after years gained him such unbroken and universal love.

Young Bartlett entered Meriden academy at the age of thirteen, and at fifteen had completed his preparation for college. His friends considered him too young, but not seeing how else to occupy him, consented, and in the fall of 1842 he entered the Freshman class in this college. The modest and diffident Bartlett,—the youngest member, with possibly a single exception,—soon became, by universal and

cheerful acknowledgment, the leader of his class in point of scholarship. We were classmates; and I have no hesitation in saying, I do not know that I ever met a finer scholar, and seldom have I encountered a brighter or stronger intellect. He had a singular quickness to perceive, a powerful memory to retain, and a breadth and grasp that subordinated every detail to the whole, and extracted order out of complication. The modesty with which he bore his academic honors was only equalled by the sincere affection with which he was regarded by his classmates.

At the request of his brother Samuel, he left college during his Sophomore year, and pursued his studies with him at Monson, Mass. There he remained nearly a year, applying himself with his usual diligence, and endearing himself in the community, so that the pleasant memory of him there has not been lost to the present time. He entered the next college class, graduating in the first rank in 1847. The "Prophetic Power of Genius" was the subject of his oration at commencement. Those who knew him best felt that no prophet was needed to estimate his maturer character, or to anticipate his eminent success in whatever calling he might pursue.

At the time of his graduation his brother Samuel filled a professor's chair in Western Reserve College; and, as he was still quite young, it was thought best that he should spend a year of more general study before entering upon his professional career. He accordingly joined a class of graduate students in that college, and spent a highly profitable year in the study of history, the German language, and the Greek dramatic poets. Here again his scholarship and personal qualities made a deep and permanent impression on his teachers and associates, so that they ever remembered him with a warm personal interest.

He entered upon the study of the law in the office of Chief-Justice Perley in 1848, and remained with Judge Perley till he went upon the bench in 1850, and afterwards

completed his course of preparation with Chief-Justice Bellows, then in practice at Concord, and was admitted to the bar in Merrimack county, July 9, 1851. How he impressed those eminent jurists by his fine scholarship, studious habits, ingenuous disposition, and legal attainments, is best told in the language of Judge Perley, written soon after the death of Judge Bartlett: "Few men," wrote Judge Perley, "have excelled him in quickness of apprehension; and this was a general trait of his mind, observable in whatever he undertook,—in his classical and mathematical studies, in the law, and even in any amusement or recreation in which he might be led to indulge. There was a playful ease in his way of doing the most difficult things, which made them look more like an amusement or a pastime than an irksome labor. With all his dispatch, he was distinguished for accuracy and correctness. It was very seldom that he fell into any mistake or blunder. His memory was also tenacious and exact. In the law, he united two things which are not often found together in the same individual,—a perfect mastery of principles, with great and ready recollection of points and authorities."

His relations to Judge Perley were most intimate and delightful,—in some respects the relation of equals; in others, almost of father and son.

His admirable collegiate training, supplemented by two years of special instruction under the immediate eye of his learned brother, and his study of the law under two such eminent legal minds as Judges Perley and Bellows, prepared him to enter upon the practice of the law with success assured. We are not therefore surprised to find him at once taking his place in the front ranks of the profession, and entrusted with a business important not only in the amounts involved, but especially because of the legal principles to be examined and applied. From the start, he gave promise of becoming eminent in the profession; and his subsequent career demonstrated how well he was appreciated and under-

stood by those who watched his entrance upon professional life. For several years he held the office of city solicitor of Concord; and with what acceptance is best shown by repeated reëlections without substantial opposition. The rugged discipline of ten years' practice in the courts of New Hampshire afforded him an admirable school of training for the faithful and honorable discharge of his subsequent duties upon the bench. In 1857 his health, until then apparently perfect, became impaired, and thenceforward to his death, ten years afterwards, his work at the bar and upon the bench was done while struggling against the inroads of unrelenting disease. His overtasked physical frame was shattered; but his intellect shone unclouded to the end.

While his success in the profession was assured, it is not claimed that he did or would have taken the first rank as an advocate. As Judge Perley puts it, "It is not impossible that he might have been found wanting in a certain boldness and confidence of manner and style which would now seem to be thought requisite in those who aspire to take the lead in that turbulent and noisy department of our profession."

Owing to the logical cast of his mind, he appeared to best advantage in matters of special pleading, in the preparation of briefs, and in the investigation and argument of questions of law before the court *in banc*. The more difficult the question, the greater delight he seemed to take in its solution. He was often consulted by his brethren upon questions in regard to which they were in doubt, and frequently wrote opinions for their guidance.

His high sense of professional honor led him to regard the profession as an office, and not as a trade. Accordingly, to witnesses he was fair and respectful; to the bench he was deferential without being obsequious; and to his professional brethren he was dignified and courteous. As Judge Curtis said of Rufus Choate, "He showed that forensic strife is consistent with uniform personal kindness and gentleness of demeanor; that mere smartness, or aggressive and irri-

tating captiousness, has nothing to do with the most effective conduct of a cause; that the business of an advocate is with the law and the evidence, and not in provoking or humbling an opponent; that wrangling, and the irritations which spring from it, obstruct the course of justice; and are indeed twice cursed, for they injure him who gives and him who receives."

Judge Bartlett was a lawyer of great research. His fingers seemed to have an instinctive clinging to authorities. He could find readily what others could not. He had a great mastery of cases, such as few ever have; but he was not a case lawyer. He had a legal instinct or genius by which he could extract from what to others seemed a chaos of conflicting decisions the true legal principle, and put it in the smallest possible compass. He distilled the spirit from the dilution, appropriating the gold and rejecting the dross.

It must not be inferred that he was not positive in his opinions, or was not sufficiently firm in maintaining opinions deliberately formed. We have on this point the testimony of Judge Perley, that "he had nothing of that facility which yields in substantial matters to importunity and over-persuasion. He was very firm in his opinions and judgments when once formed, and perfectly fearless in acting on them when duty appeared to require it."

We come now to the period when he "put off the gown of the bar to assume the more graceful and reverend ermine of the bench." In 1861 a vacancy occurred upon the bench of the supreme court of New Hampshire. The foremost lawyers of the state refused to be candidates, because they understood that he might be persuaded to accept the appointment. In obedience to the united voice of the profession, he was at once (February 23, 1861) appointed associate justice. The court at that time consisted of Bell, chief-justice, and Sargent, Bellows, Doe, and Nesmith, associate justices. No change occurred in the composition of the court while

Judge Bartlett lived, except the reäppointment of Judge Perley as chief-justice upon the resignation of Judge Bell in 1864. At no period in the history of the state has there been a stronger court. Five of the six judges with whom he was associated have held the office of chief-justice. His selection from a bar containing so many lawyers of established reputation, to be the associate of judges of such eminent ability, shows in what estimation his legal attainments and qualifications were held.

Rufus Choate thus describes the qualifications of the good judge: "In the first place, he should be profoundly learned in all the learning of the law, and he must know how to use that learning. * * * In the next place, he must be a man not merely upright, not merely honest and well intentioned,—this, of course,—but a man who will not respect persons in judgment. * * * And, finally, he must possess the perfect confidence of the community, that he bear not the sword in vain. To be honest, to be no respecter of persons, is not enough. He must be believed such" We shall see how well Judge Bartlett answered these requirements.

His legal learning was profound. He had an extraordinary genius for learning everything quickly and accurately, and remembering it during life, and without effort. We have shining and encouraging examples of what can be done by men of moderate abilities. Judge Bartlett was not of that class, and therefore, as an example, he is worth far less than many others. As a brilliant legal scholar, a brilliant legal thinker and practical logician, capable of applying ancient legal principles to the facts of new cases, and working out for the benefit of modern life the best results of that common law that has been constantly growing out of the last thousand years of English and American civilization, he was not surpassed by any one judge who has sat upon the bench of New Hampshire. It is not uncommon for a man of intellect to succeed in mastering much of the special

doctrine and general theory of the law, and to fail as a practising lawyer and working judge from a lack of ability rightly to apply his learning to the varying and novel circumstances that constitute most of the cases that are carried to the office of a lawyer and to the courts of justice. Nearly infallible as Judge Bartlett was in his opinion on an abstract question of law, he equally excelled in perceiving what rule was applicable to each case. His remarkable powers were equally accurate in theory and practice.

All great lawyers are naturally conservative: so was Judge Bartlett. Generally inclined to follow precedents, he was strong enough to disregard them when they disregarded fundamental principles. Witness his opinion in *Bassett* v. *Salisbury Manufacturing Company*, 43 N. H. 569. The action was *case* for maintaining a dam, thereby causing water to percolate through the plaintiff's meadow. On the fifth jury trial, the present chief-justice presided, and ruled the law in accordance with the English case of *Acton* v. *Blundell*, 12 M. & W. 324, and numerous cases that followed in its train. The cause was carried to the full bench on exceptions, and an opinion prepared affirming the ruling of the court below, which received the assent of a majority of the court; but the judge who drew up the opinion resigned, and the cause was continued for further examination, and assigned to Judge Bartlett, who succeeded him upon the bench. Few cases have received such careful consideration (50 N. H. 444). Four opinions were drawn up by different members of the court, of which three sustained the English doctrine. The opinion published in the reports was drawn up by Judge Bartlett, at the sea-shore, when in feeble health and hardly able to be about. It reversed the English authorities, those of a majority of the states, the decision of the court below, and the opinions of all his associates except one; yet when read in consultation every judge yielded his objections and assented to the opinion, because it was found unanswerable. But for him the contrary erroneous doctrine would have been

established in New Hampshire. The logic of the opinion, and its clear and precise style, are only equalled by the modesty which marked his dissent from the English and American authorities.

As illustrating his way of summing up a case and instructing a jury, I might cite *Hayes* v. *Waldron*, 44 N. H. 580, where his charge is fully reported; and so admirably and clearly did it set forth the law of the case, that little was left for the judge who delivered the opinion *in banc* except to adopt the reasoning and substance of the charge.

The decisions of the court written and delivered by him will be his lasting monument. Models of brevity, of perspicuous statement and logical deduction, of legal thought, and literary, unornamented style, they will endure. But they are very brief. Those that are published are but a small part of his work, and will carry to other generations a very inadequate idea of how much was lost at his decease. His associates at the bar and on the bench, who enjoyed the benefits of a personal acquaintance with him, and felt the refreshing power of his fellowship, will never lose the benefit of his personal influence, nor cease to grieve that he did not live to lead them to the end of their labors. It was not an uncommon thing for him, whether he delivered the judgment or not, to cause a decision to be put upon ground not thought of by other members of the court or by counsel. His learning was so complete, and his grasp of the law and facts so comprehensive, that while he seldom changed in consultation an opinion he had formed in his library, other members of the court not infrequently found occasion to correct theirs by the light of his expositions.

Judge Perley says of him,—"When he went upon the bench, his high qualifications for the office were at once recognized by the legal profession. His youthful appearance, his unpretending manners, and his easy and rapid way of dispatching business, might have led a careless observer to fear that he would be found wanting in solidity and sound-

ness of judgment; but the character of his mind was eminently judicial. His examination of authority in cases which required it was faithful and exhaustive. He weighed conflicting arguments and reasons with equal impartiality. He had great sagacity in perceiving the practical bearing of any question under consideration, and its connection with the whole complete system of the law; and his opinions and rulings were received with the greatest respect and deference by the legal profession throughout the state. In presiding over trials, I never learned that he was known, in the most irritating circumstances, to lose the sweetness and equanimity of his own temper; and he often had the rare felicity of winning from both sides the commendation of perfect fairness and impartiality."

Judge Bartlett never failed to show that he had the courage of his convictions whenever the occasion called for it. Witness his action upon the Soldiers' Voting Bill, so called, passed in 1863 in the midst of political excitement, when he united with three other members of the court in an opinion which set aside the act as a violation of the constitution.

In 1866 was passed, under similar circumstances, an act disfranchising deserters from the army, the constitutionality of which was brought before the full bench. Not long before his death he drew up an opinion setting aside this act, also, as a plain violation of the fundamental law of the land. The fact in some way came to the knowledge of the legislature, which forthwith did itself and him the honor to repeal the law before the opinion could be read in court.

History tells us that the celebrated court of the Areopagus, when Athens was at the height of its civilization, sat in the dark, that the judges might not see or know who were the suitors, and so be enabled to dispense impartial justice. I suppose for the same reason the Goddess of Justice is represented with eyes blindfold, that her hand may feel the "trepidations of the balance," uninfluenced by the presence or appearance of the contending parties. All systems

of judicial tenure suppose judges to be imperfect because mortal. The constitution recognizes this in that clause which secures the right to the subject "to be tried by judges as impartial as the lot of humanity will admit."

But I do not hesitate to say, that if there ever was a judge who was a living personification of the blindfold goddess; one who watched not the faces of his suitors to inquire who they were, or what their standing or influence, but only the movements of the scales held in an even hand; one who, unlike his ancient brethren of Athens, had no need to sit in the dark, because wholly oblivious to all surrounding circumstances; one who, when a whole city, Athens-like, came "to demand that the cup of hemlock be put to the lips of the wisest of men," would deliver him if he believed he "had not corrupted the youth, nor omitted to worship the gods of the city, nor introduced new divinities of his own,"—such an one was Judge Bartlett.

His good-fellowship placed him on terms of intimacy with his brethren of the bar; but no one presumed, on the strength of former intimacy, or of close and friendly relations, to influence his rulings or decisions; or, if any one did so far forget himself, the success of the attempt was not such as to encourage its repetition.

It must not be inferred, that, while he was noted for his patient, courteous, and urbane manners, he was tolerant of fraud, or failed to rebuke chicanery or improper interference with the course of justice. On such occasion he

> "Carried anger as the flint bears fire,
> Which, much enforced, shows a hasty spark,
> And straight is cold again."

The testimony of one of his associates upon the bench affords a fitting close to this review of Judge Bartlett's judicial life: "His career was brief, but it was long enough to satisfy those who knew him best, and whose judgment was trustworthy, that with life and health he would have

become the great American jurist of his generation. No mental or moral weakness impaired the operation or influence of his great powers.

"There have been great men who were not loved, and did not deserve to be loved. There have been good men who were not great. Here was a man equally great and good; equally superior by nature on the intellectual and on the moral side. Incapable of selfishness, envy, or any meanness, whole-souled in the best sense, incapable of uttering an unkind word or entertaining an unkind feeling, he would have had only pity for his enemies, if it had been possible for him to have an enemy. He had neither a single enemy, nor a single cold or indifferent friend. He involuntarily held all whom he met, bound to him by those ties of affection which draw all men to a character the most amiable and lovely, as well as by those ties of reverence which draw all men to mental supremacy. With health and life, what a judge he would have become! And, what is so much more to be said, with health and life, what a teacher and leader of youth,—what a head of an educational institution,—he would have been! Where he presided, there was no thought of legal power provided for the maintenance of judicial dignity. In him all men recognized the unconscious majesty of the law, and the unconscious majesty of whatever is greatest and best in human nature. With such as he in many places of government and personal control, it would not be too much to hope that the word 'discipline,' in the sense that is often disagreeable and offensive, might become obsolete."

There is another aspect of Judge Bartlett's character, which, although already considered to some extent because so closely interwoven with his intellectual character, yet remains to be spoken of. I allude to his moral and Christian virtues. He was valued more for his character than for his intellect. He was witty, bright, and genial, faithful and judicious: a thoughtful friend, a self-denying brother, a most affectionate son and husband. His professional life was

passed in the near vicinity of his native town ; and in their declining years the hearts of his parents turned much and constantly to him for sympathy and kindly care, and never were they disappointed. He visited and wrote to them often ; and for years, whatever were his engagements, almost never did a Monday pass without bringing them an affectionate letter. And during the last months of his life it was an occasion of almost uncontrollable grief to him that he had been frustrated of being present to comfort the last hours of his father not long before.

In his own home he seemed to be whatever a host and a husband ought to be.* So warmly was he attached to his home, and to her who was its star and its light, that he was loath to leave it, even when called away by professional engagements. The one trait that fixes itself most deeply in the memory of his friends is the kindly spirit that in his maturer years followed him in all his relations, and made him always considerate of the feelings, and actively attentive to the wants, of all around him. It was a pleasure to him to make others happy ; and he loved to do a kind office to those who could not repay. It seems, as we look back upon it, the practical benevolence of the gospel. He became a diligent and deeply interested reader of the scriptures ; and to those who knew him best he seemed to exemplify the spirit of the gospel in a most important aspect.

At the close of the summer of 1867 he returned to his home from the sea-shore, without having been benefited by the invigorating air of the ocean. For a few days he struggled cheerfully against physical weakness and disease,—more for the sake of others, perhaps, than for himself,—his pallid countenance illumined as with the lustre of a beauti-

* May 8, 1856, he was married to Miss Caroline Baker, daughter of the late Abel Baker, Esq., of Concord, and sister of the late Ex-Gov. Nath'l B. Baker. Mrs. Bartlett survived her husband, and still resides in Concord.

ful spirit. On Tuesday, September 24, as gently as a child falls asleep, without pain or a struggle, consciousness preserved to the last moment, that life, which had been so noble and beautiful, changed its course, as a river, to a smoother channel, and put on immortality. Three days later, on a bright and beautiful day in early autumn, his professional brethren, representing nearly every county in the state, and the surviving members of the court, with his inconsolable relatives, in tenderness committed to his Mother Earth all that was mortal of him who had been a dutiful child, a quick and ready scholar, a profound lawyer, an upright magistrate, an affectionate brother, and devoted husband, to rest till the resurrection morning. Then shall he enter unhindered into his glory, having come into the presence of the great Judge of the universe, whose decrees, and whose only, are perfect, because He is also Lord and King.

RICHARD FLETCHER, LL. D.,

CLASS OF 1806.

BY A. J. GORDON, D. D.

I BELIEVE that there is one trait of human nature to the operation of which this college is greatly indebted. I mean the tendency which it so often exhibits in old age of reverting strongly and tenderly to the scenes and associations of youth.

Richard Fletcher had reached the age of more than seventy-five years, when, through my ministry to the church of which he was a member, I first became acquainted with him. From that time until his death I was permitted to sustain very intimate relations with him, and I was constantly struck with this peculiarity,—that he was living almost exclusively in the past. His own generation had mostly gone on before him to the grave; and now his memory and his affection turned to the friendships of his early days. By the hour he would sit in his chair, rehearsing the scenes of his college life, recalling the names and extolling the virtues of his teachers and classmates. No college was like his college, and no alumni like those with whom his name stood enrolled. "It was the amiable weakness of second childhood," it will be said. But I remind you that motherhood and childhood are close together; and if what I saw in him was the second childhood of the scholar and the alumnus, I congrat-

ulate this college on the fact that it was accompanied with a love for *alma mater* so tender and strong, that it carried with it all his heart and all his fortune. And any university may count herself fortunate to have her sons linger into such a second childhood as was his.

Richard Fletcher was born in Cavendish, Vt., January 8, 1788, being the son of Hon. Asaph Fletcher. At the age of fifteen he entered Dartmouth college, and in 1806 he graduated with distinction. Like many of the students of this honored school, he knew what the discipline of poverty meant, and was blessed by having his academic culture toned and tempered by the stern tuition of penury. I have heard him tell how he was obliged to borrow a coat with which to appear upon the stage at his graduation, and how his first law books were obtained only by placing a heavy lien upon his prospective earnings.

After graduating, he went to Salisbury to take charge of an academy, intending thereby to earn sufficient money to enable him to enter upon the study of the law. I remember the very interesting description which he gave of his entrance upon this new sphere of service. Mr. Webster had left college the year before he entered, and he had never seen him, though he had heard much of his fame as a student. Entering Salisbury in the stage-coach, at the close of a September day, to assume his duties, he stopped at the tavern and eat his supper, and then started out for a stroll over the village. The sun was just setting; and as he ascended a hill, with his face turned westward, he saw a young man approaching. "It was the most majestic figure and the noblest countenance on which I had ever looked," said Mr. Fletcher. "It seemed almost like an angel standing in the sun." This was Daniel Webster, with the dew of his youth still upon him, and the presage of his greatness already written in his form and features;—and this was the first introduction to a friendship which was henceforth to become most intimate and confidential.

From Salisbury, Mr. Fletcher went to Portsmouth to become a student of law with Mr. Webster. Not only did he study in the office of his friend, but he boarded in his home. He was full of reminiscences of this period of his history; and I know of no such picture of the early domestic and private life of the great statesman as that which he has given. It was a household, as he portrays it, marked with the tenderest affection and the most beautiful simplicity. "No morning passed," says Mr. Fletcher, "on which Mr. Webster did not bow in prayer at the household altar, and commend his public and private interests to the Almighty." But even thus early we find an illustration of that easy-going improvidence for which Mr. Webster was noted in after years. He had proposed to receive his friend into his family, and to accept a note for the amount of his board-bill, promising to wait for the payment till he should be sufficiently established in business to meet it. Hardly, however, had he opened his office in Salisbury before the note of *five hundred dollars* came back to him for immediate payment, Mr. Webster having, under some sudden financial pressure, sold it. Young Fletcher was so discouraged by this unexpected demand upon his empty purse, that he was tempted to abandon his office and seek other employment. But a more courageous purpose prevailed, and, mounting on horseback, he rode to Cavendish, and there among his relatives and friends succeeded in raising the requisite amount, and then, "with the hard cash in his saddle-bags, he rode back to his creditor." Perhaps his noble gifts to his native town in his old age were in grateful remembrance of this succour in the time of his youthful need.

His success at the bar was immediate and eminent. He quickly rose to the front rank of advocates. His fame was such while still practising in the courts of New Hampshire that Rufus Choate, while an undergraduate, journeyed all the way from Hanover to Concord to hear him plead an important case (so a classmate of Mr. Choate has recorded),

and was so delighted with his oratory, that he declared that it determined him to be a lawyer. Notices of him as he appeared at this period of his career describe him as "of good form, of handsome and expressive features, and of most gentlemanly and pleasing address;" "an orator of great power, fluent and elegant in diction, bright and sparkling in thought, keen and quick in repartee." * Add to all these natural qualities his accurate and extensive learning and his untiring industry, and it is not strange that a few years should have found him among the very first of New Hampshire's lawyers. That he was so ranked is abundantly evident from contemporary testimony. An eminent judge, who knew him well in these days, says that he once listened to a legal argument from him of hours' duration, which was "the most learned and powerful that he ever heard from human lips." †

In the year 1819 he removed to Boston. The wider sphere, and the more eminent associations into which he was thus cast, seem not to have diminished his reputation. He brought a considerable name with him from New Hampshire, and he very soon established himself in a foremost position in the courts of Massachusetts. The tradition is, that the first plea which brought him into distinguished notice was an impromptu one;—that being in court as a spectator, and seeing that great injustice was likely to happen to a client because of the inability of a young and inexperienced lawer to cope with the counsel employed against him, he quietly stepped in, and, asking permission to speak a few words, took up the case, and argued it with such vehemence and cogency as completely to turn the scale of judgment.

It would be impossible in this brief sketch to trace in detail the brilliant legal career of Mr. Fletcher. It is said that at the bar he was the acknowledged peer of Choate and Webster, though differing very widely from either of them in the

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* Fletcher Genealogy, p. 173. † Judge Pingry.

qualities which made him eminent. He was far less versatile and brilliant than the former, and less profound than the latter; but he had a logical acumen, pointed and polished by a masterly conscientiousness, which gave him a position unique and distinguished among his equals.

Political life he touched at several points, but hardly more than touched. He was once or twice a member of the Massachusetts legislature, and in 1837 was elected a representative to congress. This is the only position he ever occupied in which he was not eminently distinguished, as it was the only position which was utterly uncongenial to him. Hence, though he was nominated a second time, with every prospect of a reëlection, he declined the honor, and returned again to the pursuits of his profession.

In October, 1848, Mr. Fletcher was appointed judge of the supreme court of Massachusetts.

All testimonies concur in assigning to him a very eminent rank upon the bench. Nature had given him a dignity most befitting the position. Study had furnished him with the ample stores of learning needed for its duties; and religion had endowed him with that reverence for truth and righteousness which lifted all his opinions and decisions to the highest moral plane. His contemporaries delight to tell of the courteous manner which graced his judicial service. He was not only remorseless in stripping off the disguises of injustice, but relentless in rebuking the tyranny and bravado of justice. And next to an evasive and tricky defence of the wrong, he most hated an overbearing and abusive advocacy of the right. Hence browbeating lawyers and specious criminals were the ones upon whom the iron hand, which lay behind the courteous manner, fell most heavily.

One of his associates speaks of that which most distinguished him in this position as "*a presiding conscientiousness;*"—a most expressive phrase, indicating that his conscience presided over him, and not he over his conscience; that, while dispensing law, he was himself subject to law,

even that law whose "seat is the bosom of God," and "her voice the harmony of the world." "Nothing," says the same writer, "could sway him from what he regarded as right." He gave decisions as one who held himself amenable to a higher than any human tribunal. He dispensed justice as one dealing with something infinitely above himself. When he retired from the bench, in 1853, his associates addressed him a most cordial and appreciative letter, which is still preserved among his papers. The letter bears the signatures of Judges Shaw, Dewey, Metcalf, Bigelow, and Cushing, and expresses in most emphatic terms their "deep sense of loss" in his separation from them, and their high estimate of his abilities as a lawyer and judge. Nor were such expressions of regard confined to his own immediate circle. Dartmouth college and Harvard and Brown universities each conferred on him the degree of Doctor of Laws. He was chosen a member of the Board of Overseers of Harvard and of the Board of Fellows of Brown University. He served most efficiently for several years as the superintendent of the Sunday-school, and was also elected deacon of the church of which he was a member. This last position he declined, from a conscientious sense of duty, after having made an elaborate argument before the church to prove himself ineligible, on the ground that, being unmarried, he could not meet the scripture requirement that a deacon must be "the husband of one wife."

On his resignation of his office as judge he retired from public life, and a little later from business life, and spent the rest of his days in study and meditation, and in preparation for a life to come. This preparation was careful and prolonged. He made a most thorough examination of the foundations of Christianity. He called to his aid the best treatises on such questions as faith and atonement and immortality; and with his Bible constantly in hand, and the best Christian counsel which he could call to his side, he sought to make the same diligent preparation to meet his Judge which he had so often

made in coming before a human tribunal. With such ordering of his closing years, and such preparation for the eternal years, he died June 21, 1869, at the age of 81.

With this very meagre sketch of Judge Fletcher's life, I may be permitted to join what must be also a very meagre sketch of his leading traits and characteristics.

In the first place, he was eminently distinguished for his professional integrity.

It is common to play upon the name of lawyer as though it stood for much that is subtle and elastic in the handling of truth, and as though it represented a trade whose business it is to show, as Canning puts it, in his "New Morality,"—

> "With keen, discriminating sight,
> Black's not so black, nor white so *very* white."

I am sure, however, that such insinuations would be justly repudiated by all honorable lawyers. But whether it is an accepted canon in the legal profession that an honest lawyer may not defend a guilty client, I suppose is another question. I have no business to pass judgment on the point, and only call it up in order to bring out a notable trait in my subject's character. His law partner, who is still living, Mr. Samuel E. Sewall, says of Judge Fletcher, that his thoroughness in examining the legal bearings of any case was only surpassed by his diligence in investigating its moral bearings, and that, "*if it were possible for him knowingly to undertake an unjust cause, it was impossible for him to defend it.*" It was the determination which a sense of justice gave him that constituted his greatest power. Without this, with all his legal ability, he was weak. And so rigid was his principle on this point, that he was apt to manifest indignation at the bare request to plead an unjust cause. One describes him as sitting in his office and listening patiently to the details of a suit which he was asked to undertake, with the offer of a large fee, when he suddenly terminated the interview with the stern reply, "Madam, you

would lose that suit, and you ought to lose it. I cannot engage in it."

This circumstance gives a fair illustration of the fixed habit of his professional career. Nothing could induce him to lend himself to the defence of the wrong: nothing could daunt him in the advocacy of the right.

Judge Fletcher was also eminently distinguished for his severe moral rectitude. His professional integrity was matched by a personal integrity so stern and exacting as to appear to many almost morbid. It was a vertical morality, which threw him out of plumb with his age at many points; and because he refused to adjust it to any standard which he did not deem strictly perpendicular, it often made him appear misanthropic and testy. I know of no estrangements or quarrels with his contemporaries on any other grounds than these. He parted company with some friends on points of honor. The attempt to strain severe justice at the requirements of supposed expediency he could not tolerate; and hence he sometimes *broke* from esteemed associates simply because he could not *bend* with them. Some who were most intimate with him were inclined to criticise him at this point, complaining that in his relations to others he was judicial rather than fraternal, coldly legal rather than kindly gracious. His character was certainly unusual if not unreasonable in this respect. It seemed as though, by his constant dealing with justice, his nature had become

> "Subdued
> To what it worked in, like the dyer's hand."

He had acquired a fine legal touch, a quick judicial sensibility; and with these he handled and tested every question of common life which he met. Of course under such severe criterions, much in public conduct and morals seemed to him extremely faulty; and since the angle of reflection is equal to the angle of incidence, the judge became out of square with his times just to the degree in which the times

were out of square with justice and righteousness. I dwell upon this fact because it is the most noteworthy feature in his later personal history, and especially because it gives the real clue to his mind and intention in bestowing the Fletcher prize fund of which this college is the trustee. The clause in his will conveying that fund sets forth that "in view of the numerous and powerful influences constantly active in drawing professed Christians into fatal conformity with the world; in view of the lamentable and amazing fact that Christianity exerts so little practical influence, even in countries nominally Christian,"—he had thought best to provide for these essays, &c.

He conceived that our modern popular Christianity had become widely deflected from the strictest rule of righteousness. As the orthodox theologian complains of deviations from the ancient doctrinal standards, he, as an orthodox moralist, lamented the decline from the ancient practical standards.

We need not stop to discuss the question whether his charge was well founded or not. He was a Puritan in theology and in morals. And even so impartial a judge as Ralph Waldo Emerson joins him in the opinion that the decline of New England Puritanism has measured a marked decline in seriousness and moral earnestness among the people. "I confess," says the Concord philosopher, "that our later generation does sometimes appear to a thoughtful mind ungirt and frivolous compared with the last or Calvinistic age in this country. There was then a serious acknowledgment and reference to the spiritual running through diaries, letters, conversations, and even into wills and legal instruments, compared with which *our* liberalities seem a little reckless and dapper." "Reckless and dapper liberalities!" No words could more exactly express the complaint which our judge made against his times. Light estimates laid by Christian men upon the punctilios of honor; easy maxims for reconciling one's self to doubtful courses of pub-

lic conduct; the Chesterfieldian morality, that "we must make men think well of us by making them think well of themselves;" eternal right replaced by the ethics of expediency; the ecclesiastic sword losing its point and edge for the rebuke of public sins and dishonesties, and all the time whetted sharper and sharper for sectarian controversies and frivolous personalities;—these were the disreputable phases of our modern Christianity on which I have heard him discourse by the hour. He thought our current religious morality had been relaxed and weakened. He longed for some positive and powerful teaching which should put iron into its blood, and blood into its cheek, that it might strike more vigorously for the right, and blush more visibly for the wrong. And it was this line of conviction, considered and reviewed for months, that led him to make the provision in his will to which we have referred, hoping that by calling out vigorous utterances on these points year by year something might be done to resist these evil tendencies.

In dwelling on this mood of Judge Fletcher's mind, I have given, I think, the best comment possible on his personal character. He was strict almost to asceticism in his moral conduct. Of the decay of conscience, from which so many suffer in public life, he knew nothing. The bar and the bench seem to have been school-masters to his integrity, training it year by year into finer sensitiveness and stricter severity. His sense of right was never debased by contact with wrong: his justice learned no tricks or artifices in its acquaintance with injustice. His conscience, instead of being trained to be a menial, was allowed such sway and accorded such obedience that it became imperial; and when he died he held the unchallenged title to one of the purest lives and most faultless professional careers of his own or of any time.

Let it not be thought, however, that Judge Fletcher was only a hard legalist. His morality was tenderly and humanely Christian as well as sternly judicial. I should not

know where to look among eminent men of modern times for such a rare blending of devoutness and justice, of saintliness and severity, as was found in his life. He kept a diary through his long professional career; and as I have perused it since his death, I have been struck with the close relation which it everywhere exhibits between his personal piety and his public life. It is full of the records of his spiritual exercises, and in this respect reads like the autobiography of a saint. There are the confessions of heart-sins; the searchings of self-examination; the reflections on birthdays and fast days, and meditations on death and eternity: the aspirations after holiness; the invocations of divine assistance in special crises of life and duty; the prayers for a heart and life conformed to God's will. The indication which this diary gives of rigid culture of the spiritual life and daily watchfulness over the heart is something remarkable, and links its author to the times and spirit of Bradford and Carver and Winthrop as strikingly as it separates him from our own times.

But what is especially significant in this journal is, that we find every grave responsibility and every great honor of his professional life entered upon only after the most rigid self-examination and earnest prayer for divine guidance. When he has been retained as counsel in one of the most important cases of his life, his diary reveals him importuning the Almighty for wisdom that he may manage the cause with the strictest regard to justice, and bring it to a successful issue. When he has been appointed a judge of the supreme court, he records his purpose and his aspiration in connection with the office in words which it may not be amiss to quote as a sample of those which abound in his journal.

"This," he says, "is the most solemn event of my life. I feel most sensibly my insufficiency for the important duties of this high office, and I humbly look to Heaven for strength and wisdom to sustain and guide me. I desire to honor God and do good to my fellow-men in this responsible situation.

I shall endeavor not only to discharge my duties faithfully and correctly, but, by my life, conversation, and influence, to improve the moral and religious character of the bar, and to elevate the character of all within the sphere of my influence. * * I shall be watchful and careful to have my conversation and manners becoming my official station, and shall constantly endeavor to form as elevated and perfect a judicial character as possible. I pray for the support, guidance, and blessing of my Heavenly Father, through the Redeemer."

Such intimacy of the bar and the bench with the closet and the altar is, we venture to say, not so common in these days that a record of it should seem trite, nor so unbecoming that a commendation of it should seem like cant. I have often wished that some representative of the legal calling might bring out the great lesson taught by these diaries of the relation of a Christian conscience to professional success, and of religious culture to judicial greatness. This is the age of specialism in the sciences. The studies and the professions are parted off from each other more distinctly than in former times, for the supposed reason that the greatest skill comes through exclusiveness and singleness of direction in investigation and practice; but there is a catholicity of science which is not to be lightly esteemed. Every specialty, exclusively cultivated, tends to narrowness in some direction. All the sciences need each other. To go no further, theology and law will be mutually helpers, always by an interchange of fellowships and studies. Our honored judge was as true a theologian as he was lawyer. His journal was not the record of religious sentimentalism. He studied the great masters in divinity: he searched the Scriptures and pondered over their deep truths. In the alembic of private meditation he distilled the doctrines and principles which he thus acquired, and transfused them into his own personal life. Thus he was all the while building up the Christian man behind the lawyer and the judge, and

forming a broad and elevated personality to sway his specialty.

He was on this account able to command marked attention when he spoke in the meetings of the church and in larger religious gatherings. It was his invariable custom on state fast days to make a somewhat extended address in the assembly of the church of which he was a member. The weight and practical wisdom of his words gave striking confirmation to the point I have just made,—of the value of interchange in the professions. It was the jurist in the pulpit, preaching from the stand-point of the lawyer and the civilian; and his brethren attached the highest value to these lay sermons, for the wise discrimination with which they pointed out the relations between the sacred and the secular in Christian life.

In Judge Fletcher's religious character the practical and the contemplative were singularly blended and harmonized. He was distinguished for his charity and beneficence to the poor. His benevolence was systematic, administered with characteristic carefulness and punctuality, and was also especially marked by the absence from it of ostentation and patronage. He was wont to lift his hat to the poor man, it is said, with all the deference which he displayed to the richest, and took special care to keep in sympathy with suffering and penury by personal visits to its subjects.

With a fondness for seclusion, which was partly a trait of his nature and partly the result of his single life, he was drawn much into "the still air of delightful studies," and into the seclusion of religious meditation. The books richest in devotion were those which became more and more the intimate companions of his solitary hours. These stood around him in his last days like ministering spirits; and their well-worn pages still attest the preciousness and constancy of their fellowship. And yet he was not a recluse, communing only with these mute companions. It was his delight in his closing days to gather to his table the friends

of earlier and later years. His journal contains delightful reminiscences of these meetings. I find President Wayland and Prof. Hackett, Dr. Worcester, the lexicographer, and Charles Sumner, grouped together in this relation. All these were intimate friends, and with all of them he could talk in their own professional dialect, and upon their special themes of study.

In closing this sketch, I am reminded of the noble benefactions which have come to this college from him whose life we thus recall. It sometimes adds greatly to the value of a gift to know the man who gave it. It is "the temple that sanctifies the gold;" and it is often the man that gives the truest worth to the money.

So let me close by transcribing the last entry which I find in Judge Fletcher's diary. It reveals the spirit in which his gifts were bestowed, and is worthy to stand as a fitting eulogy of the man himself.

"Tuesday, September 22, 1863.

"'Set thine house in order, for thou shalt die and not live.'

"May God, who has every way provided for me, and put it in my power to be just to all men, charitable to the poor, grateful to my friends, kind to my domestics, and a benefactor to the public, add this to all his favors, and grant that, in making my last will, I may faithfully discharge all these engagements, and that for want of this no curse may cleave to myself or to anything I shall leave behind me. Amen. But above all things I beg of thee, O God, to enable me to set my inward house in order before I die.

"'Give me a true repentance for all the errors of my life past, and steadfast faith in thy Son Jesus Christ, that my sins may be done away by thy mercy, and my pardon sealed in heaven.'—*Bishop Wilson's Sacra Privata, pp. 96 and 97.*"

Such was the lawyer, the judge, the Christian, the man, whose memory we recall to-day. It is rare, I fancy, that

we find so symmetrical and complete a character. Stately was he without haughtiness, austere without unkindness, religious without pretence, and devout without sentimentalism. What Cowper wrote of that most eminent of judges, Sir Matthew Hale, describes him as well as language could:

> "For deep discernment praised,
> And sound integrity, not more than famed
> For sanctity of manners undefiled."

IRA PERLEY, LL. D.,

CLASS OF 1822.

BY HON. CHARLES H. BELL, CLASS OF 1844.

FORTY years ago the students' only conveyance to Hanover was the stage-coach; and those of us whose homes lay beyond Concord had to pass a night on the road in that town. As we drew our chairs in the evening around the cheerful wood fire in the public room of the Phenix hotel, we were pretty certain to see a middle-aged gentleman, of small stature, in a brown coat, and with a bright, ruddy face, who had looked in, in the pleasant fashion of that day, to see what acquaintances the stages had brought. He made a point of exchanging a few words with every student whom he knew; and his frank smile, and the interest which he manifested in our pursuits, and his familiar knowledge of whatever subject came up, strongly impressed and attracted us. This was Ira Perley;—and it was thus that my acquaintance with him began.

He was of Welsh extraction, and was born in Boxford, Massachusetts, November 9, 1799, the son of a farmer in moderate circumstances. By the death of his father he was, at the age of seven years, left, with two younger brothers, to the care of his mother, a woman of sense and force of character. Throughout his boyhood the farm demanded his services during the greater part of the year; and it was only in winter that he could be spared for three months to

attend the district school. But he was a sedate and studious boy, and read every good book that he could lay hands on. His mother encouraged the taste, and, when her own literary supplies were exhausted, purchased a share in a neighboring village library, that her sons might have access to a wider course of reading. In after life he recalled the delight with which at this period he perused the "Lives" of Plutarch, Milton's "Paradise Lost," and even Spenser's "Faerie Queen." One cannot help wondering at this farmer's boy, who, with the slenderest instruction, at an age when "Robinson Crusoe" would have supplied the mental needs of most lads, was capable of deriving enjoyment from works, some of which, it must be confessed, are oftener read by their titles than by their contents, even by men of education.

The consciousness of superior powers must early have inspired Ira Perley with the conviction that he was equal to the requirements of a leading position in life. His ambition was no doubt stimulated by the confident auguries of his mother, who plainly discerned, in her keen-witted, forward son, the germs of future eminence. A collegiate education was a matter of course. At the age of sixteen he began his preparatory studies at Bradford academy, under the instruction of Benjamin Greenleaf, a teacher destined in after years to rank as an educational power in the land. Little has come down to us from this stage of his development, except that Master Greenleaf is said to have predicted his future greatness, because he was the only boy under his charge who never whistled! The anecdote may have a deeper significance than it bears upon the surface, and furnish a clue to the pupil's school-boy character. It certainly suggests the idea of a youth of exceptional gravity of demeanor, mixing little with the amusements of his fellows, his mind ever intent on acquiring the knowledge and discipline which he knew well were to be the passports to success and distinction.

His time was so faithfully improved at the academy, that

when he was admitted to this institution, in 1818, he was qualified to take a position among the highest of his class; and that position he always maintained. He was equally noted for his proficiency in mathematics and in the classics. Moreover, he found time to gratify his love for reading in history and general literature, and in the winters contributed towards defraying his college expenses by teaching school. He was no recluse, but enjoyed the society of his friends, to whom he was accustomed to quote from his favorite authors, and to relate entertaining anecdotes with great glee. It was remarked, some years ago, that he was one of only four graduates of this institution who had been throughout their college course perfect in scholarship and in deportment. I trust the number is greatly increased since that time.

He graduated with distinguished honor, and a year later was complimented with the appointment of tutor by those who had watched his academical career. He accepted the position, and discharged its duties for two years. What he was to the students who enjoyed the advantage of his instruction may be learned from the affectionate tribute in the "Memorial of the College Life of the Class of 1827," from the pen of that accomplished scholar, Prof. Alpheus Crosby. We also get a contemporaneous glimpse of the man as depicted from his pupils' standpoint, in the college song, which represents him as

> "A giant in leaning, a giant in mind;
> A lion in temper, both savage and kind,"—

though we must make due allowance for the addiction of students to superlatives when they describe the seamy side of the tutor's disposition.

Then with his powers thoroughly trained by a liberal course of study, and his mind laden with information in an atmosphere of books, Tutor Perley's next step was to prepare himself for his chosen profession of the law. He

pursued his studies with Benjamin J. Gilbert, of this town, and with Daniel M. Christie, of Dover,—both graduates of the college, of respectable standing, and the latter a man of extraordinary diligence and force of character, who for many years enjoyed the highest professional rank and estimation.

Admitted to the bar in 1827, Mr. Perley established himself as a practitioner here. He was anything but a pushing man; but ability and learning like his could not fail soon to attract attention. Meanwhile he accepted the office of treasurer of the college, and served for two years successively as a representative of Hanover in the state legislature.

At the first term of the court that brought his name into our judicial reports, he appeared in a cause involving a nice point of special pleading, and against an adversary of no mean pretensions,—Joseph Bell, of Haverhill. It was not a case to test their intellectual strength, but a mere contest in hair-splitting. Perley split the finest, and saved his cause. Those were days when pleading was studied as a fine art, and many a cause was lost and won on a technicality, while its merits were all untouched. An accurate, wary, and adroit pleader had already opened the door to professional success. Our young counsellor soon proved himself to be all this, and a powerful advocate beside, and began to be reckoned among the ablest lawyers of the region.

At that day the social intercourse among the members of the bar was much more hearty and unrestrained than now. Every lawyer of any practice made a point of attending the courts from the opening to the final proclamation. The hotels and boarding-houses of the county seats were filled with suitors and witnesses; and the judges and legal gentlemen had their separate table, where the food was seasoned by many a sally of wit and clever repartee.

In the evenings, at the lawyers' lodgings, there were merry times. Mock trials, squibs, stories, and songs enlivened the hour, and did much to maintain an *ésprit du corps* and

a fraternal regard among the brethren of the profession, which our day does not witness. To the enjoyment of these occasions, Counsellor Perley contributed his share. He knew the peculiarities of all the great English judges and lawyers as completely as if they had been his personal acquaintances, and he delighted to discourse about them. And he was not unfrequently called on to sing the "Poacher's Song," which in that day was a great favorite,—

> "Oh, its my delight, of a shiny night,
> In the season of the year."

In 1836 Mr. Perley removed to Concord, the capital of the state, and a wider field of practice. He was here in the prime of his powers. The highest rank in his profession was accorded him. His services were retained in almost every cause of magnitude; and he was constantly measuring strength with the ablest lawyers of his own and other states.

A judicial position was the natural destination of abilities like his. Accordingly he received the appointment of justice of the superior court, June 28, 1850, which he held until October 1, 1852, when he resigned it. On the reörganization of the courts, he was appointed, July 20, 1855, chief-justice of the supreme judicial court, and continued to occupy that position until October 1, 1859. Reäppointed chief-justice, August 1, 1864, he remained in the discharge of the duties of the office until the close of his seventieth year, when, by a provision of the state constitution, he could no longer hold a seat upon the bench. He then returned to his practice, limiting it, however, to chamber counsel and suits in equity. In this employment the closing years of his life were passed till the approach of the disease which put a period to his earthly labors. He died in his own house in Concord, February 26, 1874.

Before attempting to portray the character of him whose life I have thus briefly outlined, I must remark that he was

fortunate, in my opinion, in springing from that class of society which has furnished our country with so large a proportion of her men of mark. It has been the fashion of the biographers of self-made men, by way of enhancing the glory of their heroes, to assume that a humble origin is an obstacle to success, and that wealthy or distinguished parentage is the natural avenue to a great career. It is time that this imported fiction were discarded. All experience contradicts it. It is borrowed from countries where society is stratified, and has no application to republican institutions. Here the influence of riches is not tonic, but enervating; and it is hard for a subsequent generation to emerge from the eclipse of a great ancestral name. It is exceptional when the sons of our statesmen or millionaires sustain the family credit. "New men to the front" is the demand of our nation and our age. It is not the best born, but the fittest, who survive the trials incident to American youth. The fledgling that takes wing from a nest in the furrow easily outsoars the delicately reared native of the gilded cage.

Nature favored Ira Perley with rare intellectual endowments in happy combination and poise. His mind was equally remarkable for receiving, retaining, and employing knowledge. No one could fail to be struck by his quickness of perception. To hear a statement, and to comprehend it in all its parts and relations, were simultaneous acts in his mind. He needed no time for reflection to apply the proper legal principles to his facts. His rapidity was astonishing, not to say bewildering, to those of more deliberate movements, and seemed little less than intuition,—the lightning flash of the photograph, rather than the manual labor of the pencil. But he was free from the failing that often accompanies swift mental action: he comprehended as fully and as distinctly as he did rapidly. He never leaped before he came to the stile. His conclusions were no more instantaneous than they were correct.

A wonderfully capacious and retentive memory supplemented his rare perceptive powers. What he once learned, he never forgot. In middle life, he remarked that he had never read the history of the American Revolution since he was fourteen; but he could at that moment give the date of every battle. And it mattered not whether his acquisitions were in the line of his ordinary pursuits or the most foreign from them; in either case, a thing once known was his forever. No fish was out of season that came into his net. The students in his office were one day speaking in his hearing of one of the great English horse-races. Judge Perley, be it understood, was one whose tastes had no flavor of the stable; but, to their surprise, he took up the subject, and recounted to them the notable events of the turf for a generation or more, with the names and pedigrees of the famous racers, the matches they had won, and the number of minutes and seconds in which their greatest feats were performed. His mind, indeed, was a vast treasure-house of information, from which he drew copious supplies to explain and illustrate any topic which came under consideration. It seemed impossible to broach a subject with which he was not conversant. Nor could it be said of him that omniscience was his foible. It was from no ambition to make display of knowledge that he brought forth his stores. Had he suspected that his conversation was attracting general attention, ten to one he would have closed his lips and withdrawn into himself, like the actinia at an unfriendly touch. Some men know many things, but know nothing well. But Judge Perley's memory was not less accurate than comprehensive. There was no penumbra of uncertainty about his facts. They came forth precise and reliable, needing no verification.

The quickest perceptive faculties are not understood to be commonly associated with the strongest grasp and broadest range of intellect. We usually attach the idea of ponderous deliberation to great minds, and imagine that they require,

like the elephant, a long time to turn around and get in motion. And nimble wits are undoubtedly apt to be limited,—to lack in strength where they gain in speed. But the mind of Judge Perley was no less distinguished by power and scope and profundity, than by its readiness of apprehension. In his practice, and during his judicial service, he was more than once required to pass upon questions of great moment, involving diverse and important considerations and interests,—problems of constitutional law, in which the policy of the state was to be shaped in harmony with our institutions, our needs, and our destinies, where the charts and buoys of authorities were wanting, and the pilot must direct his course by the exercise of his own faculties and judgment, with the compass and the stars as his only guides. And these weighty questions he handled with an ease, and decided with a mastery of principles, a statesmanlike reach of view, and a comprehensive completeness, that none of the great jurists of the country have surpassed. The most eminent counsel of our bar are united in their testimony of his power. None have felt that they have sounded the depth of his intellect. There was always a conviction that he was equal to the occasion, with a reserve force beyond. The united voice of his profession has ranked him in point of capacity with our Marshalls, our Parsonses, and our Kents.

Judge Perley inherited, with the Welsh blood that flowed in his veins, a quick, nervous, shy temperament, with almost a woman's susceptibility to emotion. His feelings were easily roused both to sympathy and to resentment. The suspicion of injustice or wrong awakened a righteous indignation in his breast; and if the author was within reach, he was not to be envied. No one who once felt the force of Ira Perley's tongue ever had the inclination to repeat the experience. He was quite incapable of concealing or disguising his feelings. It could not but happen that the ardor of his temperament sometimes carried him beyond the bounds which sober judgment would approve; but if so, he had all

the readiness of a generous spirit to make the utmost amends for every syllable of the excess.

It need hardly be said that he was not a popularity-hunter. Indeed, he could never maintain that free and easy intercourse with a wide circle of society, which is the ambition of men of accommodating views and less delicate sensibilities. With a few, beyond the limits of his own family, of congenial tastes and tried friendship, he was on terms of intimacy. To them he could unbosom himself; to them he was linked by hooks of steel;—but with the great bulk of men, though he was courteous and agreeable, there was about him an evident atmosphere of reserve. Those who knew him were generally wise enough not to attempt to penetrate it, for he was quite capable of making it an insuperable barrier to any who offended his prejudices or his principles.

He maintained and lived up to the loftiest ideal of integrity and honor. His sense of rectitude seemed inborn, a part of himself. It is nothing to say that he was honest and truthful. One who knew him intimately says,—"I doubt if he was ever conscious of any temptation to be dishonest in word or deed." He could no more speak or enact a falsehood than he could "change the color of his eyes." The little deviations from literal exactitude, which custom or the wish to save others pain render venial to many minds, he never could tolerate. This extreme conscientiousness was a manifestation of the religious cast of mind which he possessed. He was of too earnest a nature not to have pondered deeply the great problems of man's duty and destiny. But he was no dogmatist; and from one so self-contained, perhaps a declaration of his faith was hardly to be expected in words. His uncompromising principles, his pure life and spotless example, and his reverent spirit, are the best evidence of the depth and sincerity of his religious convictions.

It may readily be supposed that in his practice he would undertake no cause that was unjust or even suspicious. He

gave this to be well understood, when a sharper called upon him for advice, and had told his tale of fancied smartness in overreaching his neighbor, and asked him his opinion. "My opinion is," said the lawyer, "that you have acted like an infernal scoundrel, sir!" "I suppose you do n't charge anything for that opinion," queried the crestfallen client. "Yes, sir—five dollars." This incident must have been a pretty effectual notice to knavish suitors that their retainers were no objects of desire in that office.

If it were needful to call witnesses to the extent of his professional acquirements, we would first summon Rufus Choate, himself a consummate lawyer, and accustomed to meet the best legal talent of his time. "No man in New England," said he, "knows more law than Ira Perley of New Hampshire." And he knew the law, not merely as a system of rules and decisions, but as a body of principles, made harmonious and symmetrical by the combined wisdom of ages. But few men have ever lived in our country who possessed so exact and so profound a knowledge of the common law. He was thoroughly imbued with its spirit. He reverenced its sources, and read and spoke with never-failing interest of its great expounders. He loved its forms; but he was no mere black-letter lawyer. Innovations on the ancient paths could never have been pleasant to him; but he was too wise not to recognize the needs of the age, and could distinguish well between what was formal and non-essential, and what was substantial and vital.

As an advocate, Judge Perley's strength was direct, genuine, and manly. He was always armed *cap-a-pie* for the fray. He understood his cause thoroughly, and brought out its merits completely and forcibly. He pricked every bubble in his opponent's case; and whatever it contained that was mean or crafty he held up to deserved scorn. But I need hardly say that he was above all the arts of the pettifogger. He would no more condescend to flatter the jury than he would lend his countenance to the "horse-shedding" of wit-

nesses. His causes were tried fairly and above-board. His addresses to the jury were brief, but they were telling. He spoke like a scholar, but never above the ears of his audience. Curt, pithy sentences commanded the attention. He had the clearness, force, and earnestness which, the great American master of eloquence tells us, are the qualities that produce conviction. And if there was dishonesty to expose or wrong to denounce,—and he saw no little of both "on the other side," for he entered heart and soul into his client's cause,—the weapons of sarcasm and invective fairly hurtled from his lips, and his periods rang out like the cracks of a whip.

Upon the bench, his ready apprehension and thorough knowledge of the law naturally conduced to orderliness and the dispatch of business. Not only had no party to wait for him, but he led the van and gave the pace to all, so far as practicable. He let in the sunlight of his own clear understanding upon the questions at issue; and there were no dark corners left for error or sophistry to lurk in. Drones and dunces were at a discount. Every one was on the *qui vive* when Judge Perley held the court.

In the investigation of legal questions he worked with constitutional rapidity. Indeed, it was not in him to work otherwise. There was a sort of fire and enthusiasm that attended all his mental operations. He struck out his opinions at a welding heat. He found it not easy to elaborate. He could not pause to set foot on every round of the ladder when he could reach the summit with a single bound. And what was the need of spending more time over work that was completely done? His rapid mind and impatient spirit would never have endured the prolonged incubation, which has been the habit of some judges. In fact, the very trammel of the pen seemed irksome. One of his associates on the bench assures me he has heard him in consultation talk without premeditation on legal questions better than he ever wrote. His judicial opinions are pronounced by competent

authority the best, for manner and matter, for style and law, which are to be found in the Reports of our state,—a state whose bench, I am proud to say, has been adorned by a succession of jurists second to few—I had almost said, second to none—in point of learning and ability.

There was not a particle of vanity or pretension about Judge Perley. Pride he had, not of an offensive sort, and, least of all, the pride that apes humility; for he realized what he was, and maintained a becoming self-respect. Yet he never over-valued himself, but rather took as a matter of course the qualities in himself that most excited the admiration of others.

In private and social life he was at his best, and the softer shades of his character found full scope for their exhibition. His hours of professional labor, except when official engagements intervened, were never long. He delighted to get back to his library and his garden. His neighbors, who knew the attention he paid to his vegetables and flowers, almost wondered where he found the time he gave to his books. The best authors were his constant in-door companions. Throughout life he maintained his familiarity with the ancient classics in the originals. He read Cicero much, and Horace was the solace of his later years. The French and Italian authors he perused in their own tongues. Shakspeare and the English classical writers never lost their charm for him. He was exceedingly fond of the older poets: Milton and Dante often travelled the circuit with him. He read nothing that was worthless; but that was about his only limit. History, especially on its political side; biography, particularly everything touching the great luminaries of his profession; the reviews and magazines, foreign and domestic; the better works of fiction and the news of the day,—all received their fair proportions of his attention.

Judge Perley wrote little beyond his judicial opinions which reached the press. A charge to the grand jury, so admirably suited to its purpose that its publication was

asked for by that body; a eulogy on Daniel Webster, pronounced before the executive and legislative departments of New Hampshire, and presenting an interesting analysis of the powers of the great statesman, orator, jurist, for whom he entertained a genuine admiration; and a brief address at the Dartmouth Centennial on "The Relations of the College to the Law,"—are believed to be the only productions of his pen which survive in print. These are but the foot of Hercules; but though they are all that posterity will have by which to estimate the purely literary abilities of their author, they will suffice to keep alive the regret, that, out of all that brilliancy of intellect and affluence of learning and cultivation of taste, no more enduring memorials should exist to grace our literature.

Constitutionally averse from general society, Judge Perley yet greatly enjoyed the company of his immediate friends. He was fond of conversation, and lent to it the flavor of his own taste and study. A game of backgammon or cards was not disagreeable to him. A good story was his delight. He was strongly attracted toward children. Their pure young minds had much that was akin to his own guileless nature. They went to him trustingly; and he dealt out to them fairy lore from exhaustless fountains.

It would not be just to the subject of this sketch to omit mention of his conscientious sense of the obligations of citizenship. He realized to the full, what so many forget or dimly remember, that, to render ourselves worthy of the blessings of a free government, we should take personal part in it; that just in proportion as citizens of education and character leave its administration to inferior hands, it is liable to deterioration and decay. The sentiment of patriotism was strong in his heart. He was proud of his country, and felt the most lively concern in her integrity, prosperity, and honor. From principle, he did not disdain the humblest duties of the citizen. When his townsmen asked his services in the legislature, he did not refuse them. No voter

in his ward cast his ballot more unfailingly at every election than he. Here, as in every relation of life, he manifested his love for popular institutions and his faith in their efficiency, and threw the weight of his influence to enforce the lesson of personal responsibility and fidelity to duty.

I must not close this imperfect outline without adverting to the life-long attachment which Judge Perley cherished for the college to which he felt that he owed so much. It was here that his youthful thirst for knowledge first found full gratification. The four years of his college life introduced him to a new and enchanting world. The atmosphere of this institution of learning was always sweet to him, for he was essentially a scholar. When the college paid him her supreme honors, they must have come to him with an added zest, because mingled with so many fragrant memories and tender associations. It is cause for congratulation and pride that this unspoiled great heart, this keen, capacious intellect, this ripe scholar, this erudite lawyer, this honored magistrate, turned, at the close of life's day, as in its morning, with undiminished affection, to the halls of his *alma mater*.

JOEL PARKER, LL. D.,

CLASS OF 1811.

BY J. E. SARGENT, LL. D., CLASS OF 1840.

ONE hundred years ago the present year, on the 5th day of May, 1780, Abel Parker moved from Pepperell, Mass., to Jaffrey, N. H., settled in an unbroken forest, and commenced the work of clearing up a farm for himself. He was born in Westfield, Mass., in 1753, the fifth in descent from Abraham Parker of Marlborough, in Wiltshire, England, who was admitted a freeman in Woburn, Mass, in 1645. Abel, having moved to Pepperell, served in Col. William Prescott's regiment at Bunker Hill, in June, 1775, where he received a severe wound in the leg from a musket ball, which made him lame for life; notwithstanding which he continued to serve in the army in New York and Rhode Island, where he held commissions as ensign and lieutenant.

He married Edith, daughter of Jedediah Jewett, of Pepperell, on the 14th of October, 1777; and in May, 1780, he bade adieu to Pepperell, and to his military services and ambitions, and became a farmer in what was then the wilderness of New Hampshire. He continued to reside in Jaffrey more than fifty years, until his death in 1831.

He was a tall, stately man, well endowed by nature intellectually. He held many places of trust in his town and state. He was a judge of probate for Cheshire county for

twenty years; sat in the convention that adopted the federal constitution; was a member of the electoral college of 1824, voting for John Quincy Adams. His wife was a deeply religious woman, of vigorous intellect and marked character. They left four sons,—the survivors of nine children,—as follows: Edmund, who was judge of probate for Hillsborough county, often a member of the legislature, and also long an honored trustee of Dartmouth; Asa, who was judge of probate for Cheshire county; Isaac, who was a prosperous merchant of Boston; and Joel, the youngest son, the subject of this memoir.

He was born at Jaffrey, January 25, 1795. We have seen from what stock he descended, and under what domestic influences he was nurtured. Three qualities were his by inheritance,—decision of character, a broad patriotism, and decided religious impressions.

He fitted for college at the academy in Groton, Mass., entered the Sophomore class in Dartmouth college in February, 1809, and graduated at the commencement in 1811, before attaining the seventeenth year of his age,—small in stature, but very tenacious of his dignity. Among his classmates were the Rev. Dr. William Coggswell, Daniel Poor, the missionary to Ceylon, Amos Kendall, Judge Nathaniel Wright of Cincinnati, and Chief-Justice Shepleigh of Maine.

After his graduation he studied law at Keene, and with his older brother Edmund at Amherst, entering the bar of Cheshire county at the October term, 1817. He at once commenced the practice of the law at Keene. Here he remained in quiet industry for four years, until 1821, when he felt inclined to see the Great West, and thought of taking up his residence there. Ohio was then the extreme western boundary to which emigrants dreamed of going. So he went to Columbus, Ohio, locating himself there, and was admitted to practice in the circuit court of the United States in January, 1822; but, fortunately for his native state, and probably also for himself, his Western fever abated, and

before the close of that year he concluded to return East, and settled down at the old stand in Keene.

Here he assiduously devoted himself to his chosen profession, and soon gained an honorable position at the bar. He was industrious, thorough, minute, painstaking, cautious, persistent, and untiring. Previous to this time the manner of trying causes was, to go along very rapidly. Witnesses were called and allowed to tell their own story, without much aid or direction from the side that called them. This was followed by a very brief cross-examination, with few notes taken by counsel or court.

But his practice was, to examine and cross-examine witnesses at great length as to all the circumstances they might know in relation to the case, and to take full notes of all the witnesses said on direct and cross-examination. Counsel had before been in the habit of spending their evenings at cards or other amusements, and of devoting little attention to the trial of causes except the time spent in open court. His evenings were spent in examining his case and his witnesses, in taking notes, and in preparing his points of law. In his practice he found little time for cards or other amusements of any kind. His trials were labors. "*Hic labor, hic opus est.*"

His manner of trying causes has prevailed, since his time to the present, in New Hampshire, to a great extent; and although the judge may not be able to try as many causes in that way in a given time as in the old method that prevailed before Judge Parker's time, yet the trials are much more thorough and far more satisfactory when tried in that way than in the hasty and slipshod method before spoken of. I fear that in certain quarters, at the present day, there is a disposition to return to the system of short trials and speedy justice that was in vogue before Parker's time; but my belief is, that such hasty trials will be found far too often to have been mistrials, and that this kind of speedy justice, that is attained by haste and rush in the trial of

causes, will oftener than otherwise be found to be the rankest injustice and wrong.

But while Parker was thus slowly and laboriously working his way along, there was nothing in the time or place or circumstances to make his early career eventful. He was a member of the legislature from Keene in 1824, 1825, and 1826. He was not what would be called a talking member; but when he spoke he always showed research and diligence, investigation of the subject, was learned and able in debate, and he always secured the attention and won the confidence of the House.

Although generally sedate and grave, yet he was not always so. He had a genial nature that could enjoy wit and humor, and he even sometimes, like Mansfield and Story, indulged in poetry. In 1828 he received a communication from a lady, in three stanzas, as follows, which he marked as the

VISION.

"I'd be a lawyer; gifted with power,
Clients to draw to my little retreat;
I'd pore over Blackstone for many an hour,
With pleas and rejoinders fill many a sheet.
I'd win every cause, and would eloquence shower,—
Convince judge and jury, with arguments neat.
I'd be a lawyer, gifted with power,
Clients to draw to my little retreat.

"I ne'er would be drawn from this science away,
By the pleadings of friendship or soft smile of love;
I would study and think for my clients all day,
And all the delights of fidelity prove.
To fame I would climb, would toil the steep way,
Nor shrink from the labor, if honor approve.
I'd be a lawyer—I'd be a lawyer—
Nor shrink from the labor, if honor approve.

"Then, say, what can equal the advocate's joy
The oppressor to thwart, the oppressed to defend?

The triumphs of justice have little alloy,—
Fame, honor attending, and wealth in the end.
A name for my country (how pure is the joy)
Untarnished and bright such a course would attend.
I'd be a lawyer—I'd be a lawyer—
The oppressor to thwart, the oppressed to defend!"

To this he wrote the following reply, which he entitled the

REALITY.

"Oh! I am a lawyer, and live in a den
Called an office—a snug and a quiet retreat:
It is sixteen feet one way, the other but ten,
And the temperature 's not far above 'fever heat.'
I watch there for clients, but that 's all a hum,—
Like sprites from the 'vasty deep' called, they do n't come.

"I have pen, paper, ink, and blank writs, a good store;
Three chairs and a table, a day-book and docket:
Get five writs a term, a defence or two more;
Am *plus* in my idleness, *minus* in pocket.
To persuade court and jury, I argue all day,
And convince them 'tis right to decide—t' other way.

"So much for the profit and pleasure; and now
The account as to honor, pray, let us be casting.
That there 's fame to be had, I most freely allow;
People 'damn' the profession 'to fame everlasting:'
They'll tell you a lawyer but seeks for the pelf,
And for that will out-Herod the D——l himself."

There was another practice in the state previous to Parker's time. Certain men rode the circuit of the several counties in the state, who were employed to argue the causes, acting as barristers, while the attorneys in the several counties prepared the cases for trial, and assisted thereat as junior counsel. Ex-Chief-Justice Smith and Daniel Webster had formerly been the circuit of the state; but they withdrew at an early day. They were accompanied for a

while, and succeeded, by Jeremiah Mason, Richard Fletcher, Sullivan, Ichabod Bartlett, Ezekiel Webster, Woodbury, and Joseph Bell. They were all men of great ability and high standing. The seniors of Parker, they formed for him a formidable standard of excellence, yet he did not flinch. He had commenced with a determination to argue his own causes, and as many others as were offered him, if he chose; and even in their subduing presence he rose to their rank, and obtained a respectable share of circuit practice.

Since his time it has been common for lawyers in each county to try and to argue their own causes. Since that day have followed Christie, Pierce, Atherton, Hale, Quincy, Wilcox, Wells, James Wilson, the younger Sullivan, Hackett, Emery, Harry Hibbard, and William P. Wheeler, with a multitude of others who are still in active practice in the several counties, who, by their eloquence and their learning, have sustained the prestige of the legal profession and the honor of the bar in this state, and who have followed the practice of Parker in arguing their own causes. Since his day the practice of riding the circuit of the state for the purpose of arguing causes has ceased.

In 1830 he was engaged in the trial of Daniel H. Carey for murder, who was acquitted on the ground of insanity. Mr. Parker published a report of this trial, from which it appeared that he felt and appreciated, in advance of the public sentiment, the difficulties and dangers that attended this terrible disease, and which led him to be among the early movers in the establishment of the asylum for the insane in his native state.

In 1832 Mr. Parker brought forward a bill in the legislature, prepared by himself, abolishing the then existing court of common pleas, and providing that the trial terms should be held by a single judge, with power to try all civil causes, and all criminal, except murder and treason. This bill also conferred full chancery powers upon the court. So radical were the changes wrought by this bill, that the judiciary

committee of the legislature hesitated about recommending it until it was approved, in writing, by Richardson, then chief-justice of the state; after which it was soon enacted by the legislature, and took effect as a law of the state. The greatest and most radical change in the legal practice of the state followed; but it chanced that at the same time a vacancy occurred upon the bench of the superior court of the state, and in January, 1833, Mr. Parker was appointed by the first Gov. Dinsmoor to fill that vacancy, being thus fortunately placed in a position where he could see that the provisions of his bill, and the new principles incorporated by this change into the law and the practice of the state, were fully and fairly carried out. He held the place of associate justice for five years, until 1838, when, upon the death of Chief-Justice Richardson, he was appointed chief-justice of the state, which position he held until June, 1848, when he resigned.

During this fifteen years upon the bench, Judge Parker, by his learning, industry, and ability, had impressed himself, so to speak, upon the laws and the decisions of his native state in such a way that a history of his life may justly be said to constitute a part of the history of the jurisprudence of the state. His opinions are characterized by independence, thorough research, and careful study. They are contained in thirteen volumes of the New Hampshire Reports, beginning with the sixth and closing with the eighteenth. Of the 1,244 cases reported within that period, 510 were reported by him, making about two fifths of all the cases, and as large a proportion if reckoned by the page as by number. I recollect, the first time I visited the law library at Cambridge, Mass., I noticed a portrait of Judge Parker there, in which he was represented as holding in his right hand a law-book, which was lettered on the back as follows: "New Hampshire Reports. Vol. VI."

This was the earliest volume in which any of his opinions had appeared; but the volume was thus particularly empha-

sized on account of a leading case therein, in which Judge Parker delivered the opinion, known as *Britton* v. *Turner* (see 6 N. H. Reports 481), in which a new rule was adopted for obtaining a remedy for a breach of contract, by which the party non-fulfilling the same might recover for what he had done by deducting therefrom the damage caused by his non-performance of the same;—a method of adjusting in one suit all the differences between the parties upon general principles of equity, which was contrary to the practice in this and other states prior to that time. This case early showed his independence and the sense of justice with which he approached such inquiries, as well as the clearness and force of his reasoning. Hours might profitably be spent in examining and discussing the principles upon which his leading opinions are founded; but we have not here the time for such discussion.

Neither does our time allow us to go at length into the controversy between Judge Story, of the circuit court of the United States, and Chief-Justice Parker of New Hampshire, as to the construction of the word "lien," in the first section of the bankrupt act of 1841, and whether an attachment upon *mesne process*, by the laws of this state, constituted such a lien upon the property attached as was intended by this section of the bankrupt act. This controversy began in 1842, when both Story and Parker were in the full vigor of judicial life, and continued to 1849,—a period of seven years. It was begun while Story was a most popular and accomplished teacher of law at Cambridge, and was not finished until he had passed away: Parker had ceased to be chief-justice, and was in his first year of service as professor of law in the same school to whose success and reputation Story had so largely contributed, and was lecturing to classes whose members now revere alike the memory of both. The final decision of the question by the U. S. supreme court sustained the position of Chief-Justice Parker, and is to be found in *Peck* v. *Jenness*, 7 Howard 612. Judge Story's

views upon this question are found stated at length, and with great clearness, in *Ex-parte Foster*, 2 Story 131, and in *Bellows* v. *Peck*, 3 Story 428; while those of Chief-Justice Parker are found in *Kittredge* v. *Warren*, 14 N. H. 509, and in *Kittredge* v. *Emerson*, 15 N. H. 227. The discussion assumed a political aspect at one time; and our legislature very decidedly indorsed the views and the action of their chief-justice.

It certainly was a proud day for him,—and perhaps the whole state of New Hampshire might properly and did participate in that pride,—when the national court of final resort solemnly decided, at its January term, 1849, thereby overruling several decision in their own circuit court, that the views and decisions of Chief-Justice Parker and the New Hampshire court had been substantially correct; and his opinions were adopted and confirmed as the law of the land.

In November, 1847, Chief-Justice Parker was appointed Royal Professor of Law in the Dane Law School at Cambridge, Mass., which he accepted. On the 20th of January, 1848, he was married to Mary Morse Parker, daughter of Elijah Parker of Keene. June 25, 1848, just ten years from the day of his appointment to the office of chief-justice, he resigned that post, and soon took up his residence in Cambridge. He held the place of professor of law until 1868, when he resigned and retired to private life. During this time he had not been exclusively confined to the school. He was a member of the constitutional convention of 1853, and took an active part in its debates. In 1855 he was appointed a member of the commission for the revision of the statutes of Massachusetts. The result of the labors of that commission, after some five years, appeared in the General Statutes of 1860, of that state, which continues to be used to the present time, a period of twenty years.

During the war and the excitements that preceded it, he was active in politics, though he probably did not agree

wholly with any party. Yet he made speeches and wrote pamphlets on several questions that arose, one of the most interesting of which was his speech to the people of Cambridge soon after the attack upon Charles Sumner, which was reported and reviewed in the *Edinburgh Review* for October, 1856.

After he resigned his professorship he was not idle. Important interests always claimed and received his attention. As a teacher, he was dignified, but pleasant. His legal learning was broad and exhaustive; and he soon came to be looked upon by his pupils as a deep and inexhaustible repository of all legal knowledge. Perhaps his strongest points were upon pleading and constitutional law. His manner was kindly. Instead of reproof, even where it would have been just, he gave encouragement and friendly counsel. His statements of the principles of the law were clear and accurate, and his words were words of wisdom. Happy they who have been able to follow his teachings so far as to come measurably, though remotely, near to his high standard of industry, integrity, and excellence!

He received his degree of Doctor of Laws from his *alma mater* in 1837, and from Harvard college in 1848. He was a trustee of Dartmouth college from 1843 to 1860. He also held a professorship of law in this institution from 1868 to 1874; was Professor of Medical Jurisprudence in Columbia college, Washington, D. C., from 1847 to 1857. He lectured in both these colleges upon the subject of constitutional law, and in the Boylston Medical School, Boston, and in the Medical College of New York city, upon the subject of medical jurisprudence. He was a Fellow of the American Academy of Arts and Sciences.

After his retirement he spent some seven years in the enjoyment of domestic happiness, in the society of his friends, and in companionship with his books, being still the trusted counsellor upon whom others leaned. He finally passed away, August 17, 1875, at his home in Cambridge,

not from the weakness of years, or the decrepitude of old age, but from the effects of an active disease. "His eye was not dim, nor his natural force abated." His widow and two children—a son and a daughter—survive him.

He was a man of strong religious convictions. Bred in the original faith of New England, from which he never swerved, and concerning which he never felt any uncertainty, yet he was liberal in his spirit and catholic in his views, active in good works, affectionate without demonstration, and benevolent without ostentation. A kind neighbor, a faithful friend, a good citizen, an honest man, a learned and able judge, a wise and faithful teacher, his memory will long be cherished by all who knew him.

In his will he was not unmindful of his *alma mater*, but made provision for the founding of a professorship of law in the college, which we hope in due time will be seen bearing fruit.

And, in closing, it may properly be said of the late Chief-Justice Parker, that he was the very embodiment of a high professional morality, and that he employed his efforts and influence to elevate, to purify, and ennoble the character of that profession which is "ancient as magistracy and necessary as justice." His was a life of high exertion in this noble profession, of incorruptible fidelity to every trust, and of unsullied honor in all the relations of life.

ISAAC FLETCHER REDFIELD, LL. D.,

CLASS OF 1825.

BY HON. WHEELOCK G. VEAZEY, CLASS OF 1859.

THE subject of this paper, whose quiet life was mostly spent in a small inland state, where agriculture was the principal business, in a profession always crowded to repletion, resorting to no contrivances to gain or hold position, his ambition always subordinated to a conscientious and effective discharge of duty, yet, by the distinction he acquired as a jurist,—at the bar, and on the bench, and by his published works on different branches of the law, making a name scarcely less honored than that of Kent or Story, —affords a lesson to every student and an example to mankind worthy of this occasion, when we are seeking to bring back to Dartmouth the best fruits of her bearing after more than a hundred years of cultivation.

Isaac Fletcher Redfield was born at Weathersfield, Windsor county, Vermont, April 10, 1804, and was the oldest of the twelve children of Dr. Peleg and Hannah (Parker) Redfield. His father removed from Weathersfield to Coventry, Vermont, about the year 1808; and there he spent the remainder of his life as a prominent physician and leading citizen. He died, in November, 1848, at the age of 72 years,—which was the age of his son, Judge Redfield, at his death, which occurred, after a brief sickness, at his residence in Charlestown, Mass., March 23, 1876.

Judge Redfield was twice married. His second wife and one son only survived him; and the son has since deceased.

His opportunity for schooling in his boyhood was limited. Coventry was in the extreme northern part of Vermont, which was then mainly a wilderness. His father had only enough means to purchase a tract of one hundred acres, and to provide buildings in a very imperfect manner. His family consisted of his wife, then but twenty years old, and their first child, who was called by his middle name, Fletcher. Dr. Redfield continued the practice of his profession, which took him away from home the most of the time in that sparsely populated section. His means being inadequate to provide much hired help, Fletcher was the principal companion and main dependence of his mother during the doctor's absence. When but six years old he was the chore-boy—chopped the wood, and went to mill, a distance of six miles through the woods. There are many anecdotes told of his boyhood. One of them will illustrate the boy's sense of right, which characterized his whole life. His father told him, on one occasion, to see that the miller did not steal any of the corn. Fletcher watched him closely, and was horrified at the amount the miller took for toll; but, thinking it would be of no use to remonstrate with him, as soon as he turned away the boy put back into the bags the exact excess that the miller had taken. At twelve he took entire charge of the farm, with no assistance except what his younger brothers could give, and an occasional day's work of a hired man. Both his parents were persons of great practical wisdom; but Fletcher partook more of his mother's qualities of mind than of his father's. She leaned upon him largely through life; and at his decease, she having survived him, he made liberal provision for her support.

In the fall of 1821 he was sent to the academy at Peacham, a distance of forty-two miles from Coventry, which he travelled on foot. There he fitted for college in seven months, and entered the Freshman class at Dartmouth in

the spring of 1822, being the class that entered college at about the time he began to prepare to enter. His limited preparation made the struggle at first a hard one, in competition with the young men from prominent preparatory schools, but he soon took high rank as a scholar. He was obliged to practise severe economy, teach school winters, and do all he could to earn money in vacation. Yet he overcame all obstacles, and graduated with his class in 1825 with honor, being concededly one of the first scholars in it. He received the honorary master's degree at the University of Vermont in 1835. In 1855 he received the degree of LL. D. from his *alma mater*, having received the same degree in 1848 from Trinity college.

After graduation, Judge Redfield taught school during the winter of 1825–'26, at Barton, Vt. In the spring of 1827 he entered the law office of Baxter & West, at Brownington, Vt., and in the summer of that year opened a law office at Derby, with a few books loaned him by those gentlemen. He was admitted to the Orleans county bar in the fall of the same year. At this time he was offered the preceptorship of an academy, with a good salary, which he very much needed, being in debt, but declined it, feeling that he could not, on any account, spare the time from his profession.

His first public office was that of prosecuting officer, called state's attorney, in Orleans county, to which he was elected in 1832, and which he continued to hold until his election as judge in 1835. In January, 1834, he visited Washington on professional business, and spent several weeks there, with much pleasure and profit, as he always claimed, as well as benefit to his health, which had become impaired by hard work. While there he made the acquaintance of many of the distinguished men of that day, and was admitted to the bar of the supreme court of the United States on motion of Daniel Webster, Chief-Justice Marshall presiding. Judge Redfield's mother was a cousin of the first wife of Webster, who was a Fletcher.

It was the advice of Judge Redfield to young men in the law, who had ambition, to take early opportunity to see all they could of courts and public men of ability. His policy as state's attorney was, if possible, to try every person charged with crime, but never to bring a man to trial without the necessary evidence to insure conviction. He was therefore vigorous and successful in his prosecutions, and his general practice was very large.

His election to the bench was unexpected, both on account of his age, he being then but thirty-one, and on account of his political connections. He was a somewhat prominent member of the Democratic party, which was largely in the minority in the state, and had for a few months edited a Democratic paper. All appointments to the bench had theretofore been from the dominant party. But without changing or modifying his politics, and although his political party was during the whole time in the minority in Vermont, he received from the legislature twenty-five consecutive annual elections as judge of the supreme court, and held that high trust for twenty-five years and two months, and until he peremptorily declined another election,—being a longer term than any other judge ever held the office in Vermont; and during the last eight years he was elected and held the position of chief-justice. This record renders further comment useless: it is without parallel anywhere. When a keeper of the great seal of England once refused to affix it to a pardon which the king had granted to the lord treasurer while under impeachment, that it might be pleaded in bar of the impeachment, the refusal being put on the ground that it was contrary to law to pardon a subject already under impeachment, the king took the seal from him and gave it to another to be affixed. When this was done the king returned the seal, saying, "Here, my lord, take it; I know not where to bestow it better." Not less was the confidence of the people of Vermont in Judge Redfield, although they never put him to the test of doing a wrong.

The salary of judge was not more than a third of his professional income at the time of his first election, but the office was in accord with his taste and ambition. His period of service as judge began in October, 1835, and continued until December, 1860. When he first took his seat on the bench, his associates were Charles K. Williams, chief-justice, Stephen Royce, Samuel S. Phelps, and Jacob Collamer,—constituting a court which, in the estimation often expressed by those best qualified to judge, has never been surpassed in this country. It is needless to say that Judge Redfield, with his short experience at the bar, and at his early age, accepted this high office with hesitation, and with distrust of his ability to sustain himself in association with those eminent and able judges. But the discharge of his duties quickly demonstrated that he would soon be the peer of his distinguished seniors upon the bench. Judge Redfield's reported judicial opinions are contained in the Reports of the Decisions of the Supreme Court of Vermont, from Volume 8 to Volume 33 inclusive. They number 862, and they make about 2,500 pages in the reports. They involved the investigation and discussion of many hundred subjects, about 400 of which would be termed "new questions," but which is not a strictly accurate term. This, however, is but a meagre statement of his labors as judge. Vermont not only adopted the common law of England as the law of the state, to be administered according to the English method of practice, but also created a court of chancery, with powers and jurisdiction coëxtensive with the powers and jurisdiction of the court of chancery in England, and provided that each judge of the supreme court should be a chancellor throughout the state. During eighteen years of Judge Redfield's judgeship, the judges of the supreme court were also the presiding judges of the several county courts, which were the *nisi prius* courts of the state. In addition, therefore, to the supreme court work, each judge was occupied about one third of the time in the *nisi prius* courts, besides attending to the constant and varied duties of a chancellor.

This pressure of judicial work did not, however, prevent Judge Redfield from giving time to the general study of the law,—its history, its growth, its literature, its philosophy, its morality, its relations to society, its adaptation to the varying circumstances of new industries, to the development and growth of a people under a form of government peculiar and novel, as compared with those nationalities where the law had grown into a science. He became familiar, not only with the rules, the established principles of law, as they had grown up under the administration of the great English judges, but he traced those rules back to the reasons on which they rested. He knew the groundwork of the law. He was a legal scholar in a broad sense. His printed opinions are therefore often enriched with allusion to the history of the growth of the decisive principle in the case, and the circumstances that necessarily made it law, and under which it was law. They indicate that his mind was flooded with knowledge, that flowed in upon him as he wrote. The criticism has sometimes been made, of some of his opinions, that they are too long,—are somewhat in the nature of an essay or treatise upon the principle involved in the case. It is easy to imagine how a mind, crowded as his was, would branch out, almost in spite of himself, as he wrote. No appreciative, good lawyer ever pronounced his opinions diffuse, desultory, verbose, sloppy. The scope of his scholarship and the breadth of his mind were such, that he was, like most great judges, not satisfied to rest the decision of the court in an important cause upon the statement of the technical rule. He preferred, rather, to elaborate in the opinion the principle upon which the rule rested. So that we have, in his opinions, in a proper class of cases for such a course, not only a statement of the law as established, but of the reasons back of it, which enables the lawyer to see under what circumstances it applies. His opinions were not lengthy, except in a comparatively few cases. He was exact in knowledge, but his mind was not technical. He not only inclined

towards, but loved, justice. To illustrate the bent of his mind and view of the law, in this respect, as shown throughout his opinions and whole judicial life, I quote from one of them:

"It has been often said that the rules of the law, when wisely administered, are always consistent with the relations of moral justice and absolute equity. It may be safely said that it must argue some great deficiency somewhere, when that is not the case."

His study of the broad foundations of the law enabled him to see how to apply principles so as to subserve justice in the individual case; and this, often, when ordinary minds would at first regard the decision as a violation of a technical, but established, rule. Therefore the tendency of his opinions was to lessen the space between the strict rules of the common law and the more liberal principles of the civil law, as that space is viewed by the average lawyer. In doing this, he did not leave the well beaten paths of the common law. He simply discovered that down through the centuries, under the guidance of the great masters of jurisprudence, those paths approached near to the broad road of the civil law. If he invoked technicality, it was to promote, never to defeat, justice. He knew the decided English and American cases well; and they were authoritative with him, unless he could clearly see that they were unsound. It was not enough that a case had been decided in a certain way: he inquired into the correctness of the decision. This he determined, not like some great judges, by a sort of intuition, but by an investigation and application of legal principles. He depended, not alone upon his own power of reasoning, but, as well, upon the best thought of others. The advocate before him could therefore rely upon *sound* authority, but upon no other.

He wrote rapidly, and generally without much revision. His style was concise and perspicuous, but he made no attempt at elegance or ornamentation. Of his opinions it has

been well said,—"They form the enduring monument by which he will be judged among lawyers, when all the generation of those who knew him shall have followed him to the grave. They exhibit the judicial cast of his mind, the vigor of his reasoning powers, the extent and accuracy of his learning, his unwearied industry, his clear, strong, conscientious sense of justice, the breadth of his views, the elevation of his sentiments. They show, in some measure, the field of his exertions, and the usefulness of his long service in the administration of justice. Of all his writings, they are the most significant of the character and mental structure of the man, because they are not the mere discussion of theoretical principles, or the enunciation of abstract conclusions, but contain that practical application of legal truth to the affairs of life and the course of justice, in the success of which the law and the judge find their true test and their only substantial value. What good came of it? is the question that mankind will ultimately apply to the finest of learning and the most exhaustive of disquisitions. It is upon this final and best criterion, the justice which they wrought in the cases to which they were addressed, and the wholesomeness of the general system of law which they helped to build up, that these recorded labors of Judge Redfield and his associates, during a quarter of a century, may be safely left to the consideration of posterity."

Judge Redfield, though not unfrequently dissenting from the decision of the court, rarely wrote a dissenting opinion, and disapproved of the practice. He once wrote,—"I have a very decided opinion that dissenting opinions never serve any good purpose practically, unless it be to show the conceit and self-will of the judge." He approved of the early practice of the English courts in giving brief *seriatim* opinions at the term of the hearing, and proposed to adopt it in Vermont, and let these opinions, as delivered, be carefully revised by one member of the court, and submitted to the

whole court for approval; but, under the pressure of business that burdened the court, it was thought to involve too much labor, and was not adopted. It was natural that Judge Redfield's ability should be speedily recognized, but that was no more marked or better appreciated than his integrity. His bearing was fortunate. He impressed lawyers and suitors and the whole people with his honesty. No one doubted it! Every one recognized it! On the bench he was painstaking, careful, deliberate, patient, kindly, and courteous. His sympathies were lively, and generally correct. Every suitor felt that his case had been well considered and honestly decided.

Judge Redfield manifested great interest in young lawyers, and sought opportunity to encourage and advise them. A cause did not suffer from the weakness or inexperience of counsel, so far as the court could properly supply the deficiency. The disappointment of the defeated party, and of his lawyer, which is often greater than that of the client, never obliterated a kindly feeling for the judge. He was strong in his convictions because they were the result of careful thought and study. He was therefore firm in adhering to a decision once made. He was a good listener until the argument regularly closed, but he brooked no further suggestions after passing on the question presented. He knew his power and rights when on the bench, and exercised them with dignity and due regard to the orderly and correct administration of justice, but with like due recognition of the rights and accommodation of the bar. The public saw that he was not disposed to consult popular clamor, but was self-reliant, able, and honest. These qualities commanded their respect and confidence. He was the kind of man they wanted for a judge and chief-justice, regardless of his politics. They simply *reposed* in him and his worthy associates as a court, without fear or question.

A short time before his death Judge Redfield made this memorandum: "There are few men who, towards the close

of a laborious and eventful life, cannot remember much they would wish otherwise. I have unquestionably made many mistakes; committed many errors; and it will not be in my power, if I could recall any case where I have decided differently from the actual justice of the case, to do as Mr. Justice Lawrence is said to have done,—set it right in his will by making up the loss to the losing party. But I require no apology for declaring that I have never consciously wronged any man, woman, or child, in thought, word, or deed, in court, as a judge or counsellor." Judge Redfield was correct. He need make no apology for that remark, as I believe no living man doubts its truth. It may properly be said of him as was said of Lord Chancellor Clarendon, "In the administration of justice he was so erect, so incorrupt, that captious malice stands mute in the blemish of his fame."

Judge Redfield's opinions that have been most extensively quoted in elementary works, and cited by courts, are those upon contracts and constitutional law. One opinion upon the subject of testamentary capacity, *Converse* v. *Converse*, 21 Vt. Reports, was the recognized basis of the opinion of the New York court of appeals in the famous Parish Will case, and has been more extensively adopted by courts in this country than almost any other upon the subject. In a noted opinion delivered in 1855, he defined the extent and limits of the Dartmouth College case. The branch of the law that gave Judge Redfield special opportunity and prominence was that pertaining to railways. It was a new field during his term of service as judge. Many important railway questions came before the courts in Vermont, early in the development of the railways of this country, and Judge Redfield's opinions were in advance of those in other states upon the questions involved. As an eminent lawyer has said, "It is not often that an original field of inquiry is presented to courts of justice. They have mainly to travel in beaten paths; and originality in the law proves usually a

very questionable virtue. What the commercial law was to Mansfield, and the constitution of the United States to Marshal, railway law became, in a lesser degree, to Redfield and his associates. Happily they were found equal to the occasion." Their decisions have passed the ordeal of judicial examination in England and America, and have been largely recognized and adopted as sound law. These questions greatly interested Judge Redfield, and he gave his then mature and vigorous mind to their solution. His opinions formed to some extent the basis of his great work on railway law, which these causes and the interest they awakened in his mind led him to prepare. The first edition was issued in 1857, three years before he left the bench. It was received with great favor in his own country and in England. It has since passed through five editions, and is the recognized standard work on railway law in both countries, and in both countries it placed Judge Redfield in the front rank of law writers. The most eminent jurists of England wrote in person to Judge Redfield the heartiest expressions of approval. Chief-Justice Boville wrote,—"We have nothing so complete in our law books upon this important subject." Baron Martin wrote,—"I have several times had occasion to refer to your book, and have always found it most useful. I generally obtained the information I desired, which is not always the case in a treatise; and, in my judgment, your view on the subject was always correct." Chief Justice Cockburn wrote,—"Having now read the works [on railways and wills] through, I beg to add the expression of my admiration for the great learning, research, and power of reasoning displayed in these valuable treatises. They must, I am convinced, prove standard works on the subjects of which they treat, and will form a most useful addition to the judicial literature which, I am happy to think, is common to our two countries." Not less cordial and marked in commendation were the letters of Lord Campbell, Justices Pigott and Wilde, and other eminent judges of England, and also of this country.

In 1860, numerous considerations induced Judge Redfield to retire from the bench. He was then fifty-six years old. His meagre salary had enabled him to accumulate nothing for the support of himself and family when age should compel him to cease work. A liberal offer was made to him to revise and edit a new edition of Judge Story's works. He believed he could largely increase his income in a new field of labor, which was a duty he owed to himself and those dependent on him. In the great political controversy between the North and South he had decided views on the constitutional questions involved,—views since sustained in the main by the courts, and by leading statesmen of both political parties, but not then in full accord with the excited prevailing popular sentiment. He could only look at the points of dispute with the same judicial calmness that he was trained to view all matters of controversy. The supremacy of the law was his controlling sentiment. John Brown violated the law, and therefore was justly punished. Brooks violated the law when he assaulted Senator Sumner, and should have been punished. Such were Judge Redfield's views, and he denounced both men. He was, as has been said of Coke, "a patriot, zealously attached to the law, —satisfied that it afforded the best guarantee to the liberties of the people." His independence and sense of duty led him to condemn what he deemed was wrong, whether on the part of the North or South. His expression of views on some questions was not approved by a large portion of the people, yet they desired his retention on the bench. He recognized their consideration of him. Their confidence in and respect for him had been sincere and abiding. He valued it too much to peril it by holding a position at their hands wherein he might appear to have forgotten their kindness and generosity. He could retire with their benediction, and to his own personal advantage, although with many regrets. His retirement was also a matter of keen regret to his associates and the bar, which found expression

to some extent in an address prepared by five of the eminent lawyers of the state, one of whom was Vermont's great senator, George F. Edmunds. This address, and Judge Redfield's reply, may be found in an appendix to the 36th Vol. of Vermont Reports.

It was the design of Judge Redfield, upon his withdrawal from the bench, to devote his time mainly to writing and editing law books, and he took up his residence in Charlestown, Mass., as a convenient point for this work; but the breaking out of the civil war interrupted all his plans, and compelled him to fall back upon the practice of his profession in a foreign state, in competition with what he regarded as the ablest bar in America. But his fame as a jurist had preceded him, and business of the highest character, and very remunerative, soon flowed in upon him. His reception and treatment by the bench and bar of Massachusetts was most cordial and flattering. He has left on record his expression of gratitude, with the remark that he had experienced from them more kindness and courtesy than he ever heard of any other man receiving under like circumstances. He was employed by Governor Andrew, in behalf of the commonwealth of Massachusetts, in important railroad matters. He also continued the preparation of his work on wills, which was well received on both sides of the Atlantic. All his law books are recognized as standards on the subjects treated, and made his fame as a jurist and elementary writer as widespread as the common law.

After the war our government made claims to all the confederate property in Europe, consisting of cargoes of cotton, material and munitions of war, ships, money, balances, &c. In 1867 we had suits pending in England and France, and claims very numerous not in suit. Caleb Cushing had been appointed to take charge of these suits and claims, and was expected to visit Europe in regard to them, but did not desire to do so then. The suits in the English chancery had come to such a point as to embarrass our minister, Mr.

Adams, in his legitimate duties, by calling his attention in other directions, and he became importunate to have some one, as he expressed it, "of great ability sent out forthwith, who would entirely relieve him of all vexation and responsibility in the matter."

Secretary Seward, with the approbation of the president and the concurrence of the secretary of the treasury, appointed Judge Redfield to this mission, which he accepted, and in which he was engaged just two years. The duties were in accordance with his training and taste, and the appointment afforded him a much desired opportunity of visiting Europe. The distinguished consideration and treatment which he received wherever his duties called him, and especially in England, by the most eminent divines, statesmen, jurists, and scholars, in private circles and in court, have perhaps never been surpassed in the visit of any American. He received numerous and repeated cordial invitations to the homes of the highest officials in church and state, which evinces not only the recognition of an eminent jurist accredited by his government, but also that they were charmed by his kindly social nature, adorned as it was by the refinement and dignity of self-possession, good sense, and great learning. He won their respect and friendship, which continued to the end of his life. His official duties were delicate and difficult: they required the utmost tact and ability. The amount involved was large, the questions peculiar. The respective governments were watchful, and the popular feeling on both sides was sensitive. The claims were defended by the best legal talent. Failure to recover would produce great embarrassment, and might result in bitter consequences. But through all the difficulties, Judge Redfield, by his skill, moderation, and ability, guided the controversy to a termination successful to the Americans and satisfactory to the Britons. His European mission was fairly remunerative, happily terminated, and thoroughly enjoyed. He returned to his home and the practice of his profession,

refreshed and enlarged, and gave to it the remainder of his years with great vigor.

During his residence in Charlestown, in addition to the works already referred to, he wrote a treatise on the Law of Carriers and Bailments. He also edited and published two volumes of leading American railway cases, and one volume of leading cases on wills; also, with Mr. Bigelow, a volume of leading American cases on the law of bills of exchange. He also edited an edition of Judge Story's works on Equity Jurisprudence, Equity Pleading, Agency, and on the Conflict of Laws; and of Prof. Greenleaf's work on the Law of Evidence. Of these works, one of the ablest of living lawyers* has said,—"It is acknowledged on all hands that the work of bringing up these treatises to the advance that had taken place since they were written, in these important branches of the law, was performed in a manner every way worthy their high character and their distinguished authors."

For twelve years Judge Redfield was the New England editor of the *American Law Register* of Philadelphia. His numerous editorial articles, and his notes on important cases, are among the best productions of the current legal literature of that period. He was also not an infrequent contributor to other periodicals, such as the *Churchman*, the *Boston Law Reporter*, the *Quarterly Church Review*, and the *Knickerbocker*,—selecting for subjects current topics of public interest and importance, generally of a *quasi* legal character. During the late civil war he wrote an extended article for the *London Law Review*, in vindication of the nationality of the United States general government, in reply to the advocates of the right of secession, which was extensively republished by the law journals of this country. He also published a letter, in 1865, to the late Senator Foote, of Vermont, upon the points settled by the war, the *status*

* Hon. Edward J. Phelps.

of the states attempting secession, and the policy of restoring the government under the constitution. His views attracted attention at the time, and have since been generally adopted. He published biographical sketches of his predecessor, Chief-Justice Williams, Senator Phelps, and others. He wrote many of the leading articles in a new edition of Bouvier's Law Dictionary.

His practice of the law, after his retirement from the bench, consisted largely in giving written opinions in important causes. The amount of this work was astonishing, in view of his labors in other directions. He was for some time a lecturer upon medical jurisprudence in the medical department of this college, and was solicited to lecture elsewhere, and also to write for other English and American law journals. His recognition as a jurist and legal author was surpassed, perhaps, by that of no man during his time; and he ranks among the first of modern times.

From early life he was a devout member of the Protestant Episcopal Church, and was instrumental in founding churches in Montpelier and Randolph, Vt., where he resided much of the time while on the bench. His interest in the Church was unabated through life. He was a member of the General Convention of the Church for many years from Vermont, and once from Massachusetts, and participated in the deliberations of that august body with great care and interest. It was an assemblage where his calm judgment, broad views, and clear statement produced profound respect and great influence. His religion was not a profession merely. Without ostentation, but in simplicity and as a reality, it quietly pervaded his life. George III once gave Lord Chancellor Eldon a seal, on which was engraved Justice with eyes unbandaged, directed in her path by Religion. The king, on presenting the seal, told the chancellor "that Justice was generally painted blind, but he did not see why she should be so, if her path was guided by Religion." This might have been as well said to Judge Redfield.

He was liberal in his charities, sincere in his friendships, social, courteous, refined, and dignified. His life was long and laborious, but never a burden. Before his mind was blunted, before his usefulness was impaired, while still pursuing his favorite work,—which had been an uninterrupted life-work,—surrounded by friends whose companionship he had attracted, receiving the homage which his accomplishments had won, cherishing the Christian faith which had grown with his years, he passed to his life's end, "for death mature."

In reviewing this life, we see so little to condemn, so much to admire, it seems scarcely extravagant to apply to Judge Redfield the encomium which Burke passed upon Sir Matthew Hale: "He gave to his state the most brilliant example of sincere and fervent piety, exact justice, and profound jurisprudence."

If I were asked how this boy wood-chopper of the wilds of northern Vermont became the peer and associate of the most eminent public men of his time, the counsellor of states, a master of jurisprudence, I should answer, By a life of honesty and methodical industry.

JONAS CUTTING, LL. D.,

CLASS OF 1823.

BY HON. JOHN A. PETERS.

JONAS CUTTING was born in Croydon, N. H., November 3, 1800, and died in Bangor, Maine, August 19, 1876, making his span of life nearly 76 years. He was twice married. Of his four children, only a daughter survives him.

His life is an illustration of the success that follows the efforts of a person who from youth upwards has but little besides himself to depend upon. He entered Dartmouth college in 1819. Many a time has he described to his friends the misgivings that fell upon him on the day of parting from his home and turning his steps towards the college. His good father, a New Hampshire farmer, was unable to spare his horse from work longer than would take him half the way, and the latter portion of the distance between his home and Hanover he travelled on foot, with pack upon his back. What better investment for future fruits than that act of manly independence! A precious reminiscence to him of Dartmouth was, that Rufus Choate, the world-renowned advocate, had been, during a portion of his college course, his tutor. Dartmouth, in due course of time, gave him her first degree, and in 1858 conferred upon him the honorary degree of Doctor of Laws. His *alma mater* now seeks to assign his name to an honorable station in the

galaxy of the great men who have been her graduates, by placing upon record a brief account of his distinguished life and services. Well may the college respect the name of Jonas Cutting, for no man's love of his *alma mater* was ever more genuine than his.

After graduating, he pursued the study of the law, first with Hon. Henry Hubbard, of Charlestown, N. H., and afterwards with Hon. Ruel Williams, of Augusta, Me.,—enjoying in early life intimate and confidential relations with learned lawyers and distinguished public men. When he became fitted to enter into the practice of the law, the eastern section of the state of Maine afforded an inviting field, and he entered into it, locating at Orono, in Penobscot county, in 1826, and removing to Bangor, in the same county, in 1831, where he ever after resided till he died. Here he formed a law partnership with the late Governor and Judge Edward Kent, one of the noblest of men, a partner ship continuing seventeen years, and maintaining a standing at the very head of the profession in Maine.

A very strong and enduring mutual attachment existed between these two eminent and estimable men. They were very able lawyers, in somewhat different ways. As a firm, the combination of character and ability was complete. They were afterwards, for fourteen years, associated together upon the bench of the supreme judicial court of the state of Maine. Their judicial terms expired at nearly the same time, they were of about the same age, and died within a few months of each other. Both grew old gracefully, with but few wrinkles upon the face and none upon the mind, consoled by those enjoyments that should accompany old age, "as honor, love, obedience, troops of friends." In November, 1876, Judge Kent pronounced, before the court and bar, a touching and affectionate tribute to the memory of his deceased associate, and himself passed to the spirit world within a six-month afterwards.

Jonas Cutting's services to society and the state consisted

in the successful accomplishment of the work imposed upon him in the callings of lawyer and judge. He became closely identified with no other associations of public life than those pertaining to the bar and bench. No love of political preferments, no desire to enter after the pursuit of wealth, could draw him from this arena. He had clear and firm convictions about political men and measures, and ever most unreservedly and resolutely expressed them. He occasionally went into a political caucus to advocate the cause of a friend, and he often spoke of his participations in newspaper editing when he was a student-at-law in New Hampshire. Although first a Whig, and, after that party was gathered to its fathers, a Republican, he never would put himself under bondage to any party, nor be tied exclusively to its candidates. His soul was deeply agitated for the cause of his country when the blow was aimed at our national life in 1861. But he made the law exclusively his chosen profession. This was both his real and ideal field. Here were his labors and his pleasures. Here his soul was contented; and "our content is our best having," saith the "myriad-minded Shakespeare."

Judge Cutting was for nearly thirty years incessantly busy at the bar. How difficult an experience to portray with the pen! No man's character can be so fitly described as it can be appreciated and felt. Character is individual. The human faculties are common to mankind, but the particular combination in which they are held by a man marks his identity from all others. It is difficult to describe that difference. And how uneventful of historical record a lawyer's life seems to be! His business is an endless-chain sort of employment, the experiences of his whole life being very much the experience of a single day constantly repeated. The world knows his fame much better than his works. His influences fall upon society, like the dews of heaven upon the earth, quietly and unobserved. His noblest acts are known chiefly to those only who are attendants upon

the court-house, and his sympathies and sufferings for others are appreciated but by the few. "It is in the bosom of his contemporaries of his profession, and of his clients and personal friends, that the memory of the lawyer is embalmed," says a writer.

Judge Cutting soon came to the front rank of the bar among the very able lawyers in eastern Maine. Among his early compeers were Hon. William Pitt Fessenden, a while residing in Bangor, afterwards United States senator and secretary of the treasury; Hon. John Appleton, now the distinguished chief-justice of Maine; Hon. Joshua W. Hathaway, who became Judge Cutting's associate upon the bench; Hon. Elisha H. Allen, now minister plenipotentiary of the Hawaiian Islands at Washington; Judge Frederick H. Allen; Hon. Albert G. Jewett, ex-chargé d'affaires of this government to Peru; and Hon. Jonathan P. Rogers, at a time attorney-general of the state, a man of remarkable abilities, and a bright particular star in the legal firmament of Maine, who died at Boston in 1846, at the comparatively early age of 45 years. There were, and are, other distinguished men who were intimate associates of Judge Cutting at the Maine bar, who came to the practice later than those before named.

Judge Cutting, as a lawyer, had great skill in analyzing complicated facts. He had an aptness for organizing the materials of a law-suit, and would marshal them into an array with the care and precision of a veteran handling troops. His mind was methodical and orderly, and his perceptions clear, quick, and very acute. There was a definiteness of thought or action in what he said or did. His mind easily held the track it started upon. The needle-gun had not a more unerring aim. It pierced to the root of the matter, easily discarding all things collateral to a discussion. Not that he did not see all the points involved in an investigation, for he had a rare ingenuity for nice and refined reasoning in technical cases, when the occasion called for it.

He had a good deal of practice at the bar in tax-title cases, where the law is strictly construed to save forfeitures, cases that grew up after the business break-downs from 1836 to 1838, and he exercised the skill and had the success of a veritable sapper and miner in destroying the foundations of tax-titles which came in his way. Saladin's sword was not sharper than his intellect, in dissipating to pieces the false structure of an adverse legal argument. He was prompt in seizing upon all advantages afforded by the neglect or mistake of opposing counsel, and, like a sailing vessel hugging the wind, would often make headway by an adroit appropriation of the forces that were pressed against him. Not that he was not a wide-minded man. He showed at the bar and upon the bench that he had abundant stores of practical judgment and common-sense. He possessed a thorough knowledge of the principles of the common law, and displayed great acuteness and wonderful readiness in applying them to cases. He was an uncommonly safe legal adviser. Many salient and interesting things in the career of Judge Cutting at the bar could be narrated did space permit. Many of the remarkable cases in the courts of Maine were his victories.

He was not among the most learned but among the best learned of his profession. He was adequately learned, confining his explorations for knowledge to a few well selected rather than to many books, both in law and general literature. He possessed a very clear and accurate knowledge of the subjects investigated by him. He had early imbibed, from the very well-springs of jurisprudence, a thorough knowledge and appreciation of legal principles, the mastery of which easily constituted him the accomplished lawyer, judge, and jurist.

He had not eloquence, in the popular sense of the term, but he had what Lord Bacon esteemed to be a faculty greater than eloquence, and that is, "discretion in speech;" and he had earnestness, which is said to be the devotion of

all the faculties; and he had an abundance of sarcasm and wit. His style of speech was neat and simple. He made but little use of the "jewelry of rhetoric in his discourse," but clothed his ideas in exact and expressive words. It was an effective style. The great poet says, "An honest tale speeds best being plainly told." He was usually brief in his addresses before court or jury. He wasted neither ideas nor words. "He that hath knowledge spareth his words." He was able to the jury, but abler to the court, and was a formidable foe and a powerful ally before any tribunal.

Judge Cutting became a judge of the highest court in Maine in 1854. His judicial career ran just twenty-one years, consisting of three several appointments for seven years each. The office remained to him just as long as his bodily strength would allow him to enjoy the performance of its services.

From what has already been said of him as a lawyer, it would be easy to infer that he made a most successful judge. In this field his mental endowments shone conspicuously. His legal style and character are impressed with unmistakable distinctness upon many of the judgments of the court. Some of his written opinions are admirable specimens of that close and technical reasoning for which he had an uncommon aptitude, which has been before spoken of, and which he would call into service when justice and the occasion required.

He presided upon the bench with ease and simplicity, "having the happy medium of promptness and deliberation," without affectation or pretension, and without undue official pride. "Patience and gravity of hearing is an essential part of justice, and an over-speaking judge is no well tuned cymbal," says Lord Bacon in his essay on judicature. Judge Cutting's bearing was that commended by Bacon. He seemed to be able to shut himself up within the walls of a cause on trial, knowing and caring for nothing outside of it. He was so careful and painstaking in under-

standing the law and facts of a case, that his rulings were seldom wrong, and he was rarely overruled. His judicial as well as his individual opinions were usually free of doubt or uncertainty, carefully formed and tenaciously maintained. He was fearless and independent in the conscientious discharge of all official duties.

When he quit the bench, the bar expressed its affection and respect for him by a public meeting and eulogistic resolutions, and similar testimonials were added upon the occasion of his much lamented death.

A leading element in the character of Judge Cutting, as a man, lawer, and judge, was his great simplicity,—using that word in its highest and best sense. "The greatest truths are the simplest, and so are the greatest men," says an eminent writer. This predominating faculty was conspicuous in all his public and private life. It affected him through and through. His motives and actions were so transparent you could see through them. His mental as well as his moral character was strongly marked by this fortunate faculty. It would naturally follow that he was an honest man. His integrity was free of all spot or taint. Uprightness was a part of his nature, born in him. He was an honest man in the liberal sense of the term. That is, he was an unselfish man, and coveted nothing not his own. He was satisfied with what he had and with what he was. He was a sincere man: there were no false sides, equivocations, duplicities, or shams about him. He had no great patience with falsehood in any of its forms, anywhere; and upon tempting occasions, where any wrong was to be rebuked, could be plain-spoken and severe.

Nowhere did he display a greater simplicity or purity of character than in all the walks of private life. His tastes were simple, his wants few. He was unostentatious in all ways, kind and affectionate, sympathetic and generous, confiding with and fond of those he well knew, and a delightful personal and social companion. He greatly enjoyed wit and humor, and conversational pastime.

In person he was light for one of his frame, though he had a healthy and enduring physical constitution. His countenance was striking. It was dignified, beaming, and expressive, benevolent and agreeable,—a good short-hand of his mind. He looked the lawyer and judge.

He had a strong religious nature. Here, too, the character of simplicity prevailed. He was bound to no church, nor the tenets of any; but his religious faith had always been as steadfast as an anchor. He met the mystery of mysteries with great tranquillity and peace of soul, having a perfect belief of immortality beyond the grave. He did not allow himself to be troubled with the fine distinctions between different theological creeds and dogmas, but "in the presence of death he exhibited a faith which towered above creeds and dogmas, and whose roots were in the depths of his soul."

The life of Judge Cutting is a benefaction to those who come after him,—a gain to the world. He successfully fulfilled the mission that was accorded to him. Every good life adds something to the common prosperity. The worth of a state is the worth of the individuals composing it. "There is properly no history, only biography," says Emerson. Man's existence is short, but the benefit of his example may be lasting.

> —— Breve, irreparabile tempus
> Omnibus est vitæ; sed famam extendere factis,
> Hoc virtulis opus.

ETHER SHEPLEY, LL. D.,

CLASS OF 1811.

BY J. W. PATTERSON, LL. D., CLASS OF 1848.

IT is an extraordinary, perhaps an unheard-of thing, that eulogies should be pronounced upon a father and son on the same day, and from the same platform, for qualities and characteristics which made both preëminent among the leading men of their time, and in kindred walks of life. It is of the elder of the two Shepleys I have the honor to speak in this brotherhood of his *alma mater*.

Ether Shepley was the son of a farmer, and born in the old town of Groton, Mass., in the year 1789. His health having been undermined by sickness while yet a boy, and finding his strength unequal to the tasks of the farmer and the merchant, he abandoned manual labor and devoted himself to study. Trusting to his own efforts for the means to defray the expenses of his education, he worked upward with unabated zeal, and graduated, with high honors, in 1811, at the age of twenty-two.

On leaving college, he began the study of medicine, but, warned by a feeble constitution that he might not endure the hardships of medical practice, he soon turned to the study of the law. He read for two years in South Berwick, Me. He hoped to spend his last year of preparation in Boston, but having been refused admission to the office of a distinguished lawyer in that city, on account of a difference of

political views, he went to Lunenburgh, Mass., and finished his legal studies. In 1814 he went into partnership with Hon. William P. Preble, of Saco, but the connection was soon dissolved, and he entered the lists alone against the phalanx of extraordinary men who were at that time practising at the bar of Maine.

The young man, whose light was not lost in the lustre of a constellation of jurists in which the genius of Mellen, Samuel Fessenden, Greenleaf, Holmes, Emery, and other kindred spirits shone resplendent, must have been sustained by gifts of a high order, and by a consciousness of reserved power. There was within him

> "A motion toiling in the gloom,
> The spirit of years to come,
> Yearning to mix itself with life."

At first, on entering this arena of intellectual rivalry, the conflict with the skilled and disciplined combatants seemed too unequal and difficult, but he never flinched in an encounter; and, later in life, recalling his early struggles, he says,—"After a few contests with the shrewdness of one, the wit and ingenuity of another, the vehement and flashing eloquence of a third, and the placid argument and special pleading of a fourth, I was allowed to stand *rectus in curia*."

In reviewing the career of the young lawyer, whose constitution was too feeble to endure the labors of the farm, we are surprised at the rapidity with which he became an equal of the foremost at that illustrious bar; and yet he was too great and too honest to rise by arts, or to practise any of the "tricks of the trade." A comprehensive grasp of the principles and the functions of law, and a seemingly intuitive perception of its relations and applications to the historic and daily life of men; a devotion to his profession, which made study a recreation and recreation an irksome diversion; a conscientious and exhaustive preparation of his cases; a lucid and natural elocution, which rarely took the

form of brilliant rhetoric, and hence evoked no suspicions or antagonisms, but gave unobstructed play to his resistless logic, were the vehicles of his progress. He would employ no methods for a temporary triumph that were unworthy of himself or his profession.

He had no occasion, and would have scorned, to hide poverty of thought in magnificence of style. In terse and simple Saxon he always spoke to the comprehension of the humblest listener. His object was to convince, not to impress, and he trusted entirely to the force of ideas.

In the pursuit of justice, he was indifferent to censure or applause, and would maintain the cause of truth and integrity, though the popular clamor thundered round the whole horizon.

Judge Shepley's unvarying industry gave him a wide range of juridical knowledge, and his power of analysis enabled him to follow and apply its subtlest distinctions in the practical work of the court-room. He seemed equally successful as counsel and advocate. His quick perceptions of the merits and the law of a case made his advice exceedingly valuable. In the conduct of a suit, his skill and power were a match for any antagonist; and the simplicity and clearness with which he presented the points at issue, and the law which governed them, were more effective with the court, and even with the majority of jurors, than the most impassioned eloquence, which he never affected.

In 1819, only five years from the time he began his practice, he was elected to the legislature, to aid in effecting a separation of Maine from the jurisdiction of Massachusetts; and, when this had been secured, he was made a member of the convention which was assembled to frame a constitution and organize a government for the new state. In both these positions he acted a prominent part, and gave promise of great skill as a practical legislator.

On the elevation of his former partner, William Pitt

Preble, to the bench of the supreme court, in 1821, he was made district-attorney of the United States. In this position, which he adorned for thirteen years, his resources were tested in all the forms of legal encounter, by the most gifted and experienced attorneys of his own and neighboring states; but his genius and acquisitions were equal to every emergency, and his business and fame grew year by year, till, in 1833, when standing, by general consent, at the summit of his profession, he was chosen to the United States senate in place of the famous John Holmes.

His predilections and aptitudes were not for political life, and he never took kindly to its duties, yet he added to his reputation during the three years he served in the senate. He laid no claim to the brilliant forensic powers of his colleague, Peleg Sprague, but the soundness of his judgment, and the force and clearness of his presentation of his views, were a full offset for the more dazzling splendors of oratory. He was in the senate during the presidency of Jackson, and was a friend of the administration. He made an able speech on the removal of the deposits from the United States Bank by the president, in which he paid a touching tribute to his college class-mate, Amos Kendall. It gladdened the heart of this great man to utter such words of friendship in places of power, where his judgment would be a benefaction to its object. He did not belong to the later tribe of political cowards, who shirk the manly, Christian duty of vindicating justice through fear of personal damage. But his speech on the question of the "French spoliations prior to 1800" is said to have been his ablest effort in the senate. A distinguished gentleman, who in such matters is an authority, writes me in these strong words: "I think it was the most clear, full, admirable, and absolutely convincing speech ever made on that subject."

Rarely indeed has any senator left a record so brief and yet so strong and lasting as his, and still he gladly left the senate for a seat upon the bench of the supreme

court of Maine, in 1836, on the resignation of Judge Parris. This was the field in which he was destined to reap the ripest and richest fruits of his years of cultivation.

Judge Shepley was fitted, by birth, education, and natural endowments, to fill an exalted place upon the bench. An apprehension of the rights and relations of men, as held by the yeomanry of New England, he seems to have inherited in an eminent degree. The puerile assumption of special privileges and social superiority on the one hand, and the self-abnegation and fawning servility on the other, which spring from the castes and orders of an artificial system of society, had no place in his philosophy of human rights. He recognized the equal responsibility of men before God, and hence their absolute equality before the law, "whose seat is the bosom of God." This was never a question of mental adjudication with him, and for this reason his course was one of severe and unswerving impartiality in the discharge of his judicial functions. He made inquisition only for the facts and the law, in every case. He denied himself the exercise of all political rights, that he might be free from the taint of partisanship, and guarded against the influence of personal animosity and friendships, that he might realize the ideal of a perfect judge. It was sometimes thought he was too positive and stern; but, if true, it sprung from his intellect, not from his heart, which was as tender and sympathetic as a woman's. He would not allow a jury in quest of justice to be bewildered or misled by craft of speech, or their judgments to be surrendered to the control of passion; but this must be attributed to a spirit of justice rather than severity.

His knowledge of law was comprehensive and exact; his perception of the motives and characters of men, and of nice distinctions of principles and facts, quick as intuitions; his hatred of tricks and injustice supreme; and his practical sense unsurpassed. It would be marvellous if such a man did not sometimes exhibit impatience of the ignorance, stu-

pidity, and artful devices of counsel. A great judge, seeking justice for the accused, cannot brook a scoundrel or a fool at the bar. It was such qualities in Judge Shepley that gave to his opinions a scope and weight that have made the reports of Maine, and especially the twenty-six volumes for which he furnished largely the material, an authority in all the courts of the land.

While yet a practitioner, to an opposing counsel, who had asserted that "the justice of their claim was obvious," he is reported to have replied, "The law is the rule of decision, and the law is the justice of every case." He did not draw his law, however, from the confused and discordant dicta of the digests, and so accommodate it to his cases, but rested his cases upon right reason, assuming that "nothing is law that is not reason." The spirit of this was drawn from the earliest source of the civil law. It was the old maxim,—"*Discernere per legem quid sit justum.*"

He was never tempted by his great learning into curious but irrelevant disquisitions from the bench, never bolstered unlooked-for decisions by ingenious theories, and was not ambitious to be thought profound and original through new and unusual interpretations of law; but was content wisely to apply its principles, as expounded by the great authorities of the past, to new cases as they arose in the course of judicial proceedings.

He followed the precept of Bacon, that "judges ought to remember that their office is to interpret law, and not to make law." And yet the opinions of Chief-Justice Shepley constitute as clear, compact, and practical a body of juridical learning as any state can boast, as the product of a single mind, devoted to the dispensation of justice in the courts.

The last of the resolutions adopted by the supreme court of Maine, at the time of his death, pays this beautiful tribute to his work upon the bench:

"*Resolved*, That we look with an honorable pride upon his long judicial career, its eminent ability, its spotless purity, and its untiring industry. We are grateful that he was permitted to live so long, and to do so much for the state and for the great cause of sound jurisprudence. We can bear him in our hearts with manly pride, and hold him up as a fit example for professional and judicial emulation. He will long live in the memory of his brethren, and more permanently in the recorded legal judgments which have stamped his name indelibly upon our judicial records."

Such a memorial, drawn by his illustrious associates and the distinguished lawyers at the bar, and perpetuated upon the judicial records of a great state, is more precious and enduring than the storied monuments of kings.

Judge Shepley was not without temptations to leave his chosen seat for the dazzling rewards of political power. He declined the exalted position of attorney-general of the United States, and continued to discharge the duties of his high office till 1855, when his constitutional term as chief-justice expired by limitation.

But though the judge had laid off the unsullied ermine which he had honored for nineteen years, the state still clung to his services, for there was no decline of his powers. His westering sun yet shone with all the splendors of its noonday glory, and in the following spring he was appointed sole commissioner to revise the statutes of the state. This last official work was completed with signal ability, and his revision published in 1857. That the state which this great jurist had so faithfully served and honored should ask him to leave the last impress of his matured genius in the spirit and letter of its laws—*quorum pars magna fuerat*—was a fitting and beautiful instance of the gratitude of republics.

"In all his ways," in the impressive words of Judge Howard, "he had the inspiration of great faith and the accomplishments that are born of it. He loved the law, conscien-

tiously sought its distinctions, and gained them with liberal rewards."

The private and domestic life of Ether Shepley was as simple and pure as his public life was exalted. Five years after graduation he married Anna Foster, a bright and beautiful girl of this village, to whom he became engaged when a poor student in college. Sensible in this, as in everything else, this thoughtful man did not enter into this responsible relation till he was ready; and Miss Anna showed her appreciation of the man by waiting her appointed time. She thought a poor boy, with brains and industry, a better match than a pampered spendthrift without either, and lived to prove her theory. The fruit of this happy union was five sons, two of whom became eminent in the profession of their father.

In retirement from official duties, the judge still held his place upon the board of trust of Bowdoin college, and was an active member of the Maine Historical Society, of which he was the only surviving corporator. In all matters of public interest he kept himself fully informed to the last.

When the civil war burst upon the country, it was an inspiration to the young men of the state to see how quickly and grandly the old fire of patriotism kindled and glowed in the bosom of this venerable father of the state. In the absence of the younger Judge Shepley, in the discharge of high public duties in the military service of the country, the old statesman came forth from his retirement and took upon himself the discharge of the extensive legal business of his son, with all the industry, force, and precision of his early practice. It was a beautiful sight to see the old man keeping aflame the home fires, while his distinguished son was ministering to those that glowed on the front of war. On the return of the general to his professional duties, the father again retired to the calmer and sweeter pleasures of domestic and social life, and to the constant contemplation of those grander themes that loomed upon his inner vision,

as at fourscore and seven he moved with firm step to the cold stream that flows between the life that is and the life to be.

It is a singular fact, for which I am indebted to Senator Blaine, that this great lawyer, whose active years had been devoted to the profoundest and most abstruse juridical studies, on retiring from professional pursuits became as absorbed and fascinated with fictions as he had been with realities. With rest there came a rebound of the faculties to a species of literature that would keep alive the sensibilities, and withhold the mind from the paralysis of idleness. The same was true of Mr. Christie, of our own state; while Chancellor Kent became an enthusiast, at the last, in the study of geology.

But higher than his political and judicial honors, and more lasting than the intellectual triumphs of this gifted statesman and jurist, was the pure and lofty Christian character he achieved amid the temptations and distinctions of his exalted station. In early manhood, while advancing to the honors of the bar, he was providentially led to reflect upon his spiritual interests and relations, and, with his usual promptitude, obeyed the deductions of reason, and made a public profession of his faith. In this, as in all business, he acted from a conviction of personal duty, and with the same independent manhood that characterized his whole life. From the moment of decision his conduct was consistent with his vows. Never, amid the pressure of official duties, did he fail to discharge the higher obligations of religion; and the type of his piety lost nothing of its simplicity and earnestness with the accumulation of intellectual resources and civil honors. He became more devout and trustful with the years, and at last seemed like some venerable ambassador who had fulfilled his mission, and was waiting to be recalled to the court of his king. To those who spoke to him of death, he would reply, "I am waiting;"—and while he waited men learned to love and venerate the white-haired pilgrim.

On the 16th of January, 1877, the summons came, and he "fell on sleep" as quietly as a child, and was gathered to his fathers.

It is here a matter of pride, that this pure man, whose life was so great and so beautiful, was a graduate of our college; and it would be an unpardonable neglect if the institution so honored by his life should fail to pay a tribute of grateful respect to his memory.

Gladly, in closing this brief memorial, we again recall, for the emulation of later alumni, his industry and juridical learning, the clearness and precision of his legal opinions, the force and justness of his reasoning, the purity and terseness of his language, his scrupulous honesty, and the simple-hearted piety that elevated and inspired his professional career.

He regarded law as systematized common-sense, and expressive of the highest public morality, and hence a practical science, which it was his duty, as a professional man, to master in its principles, and, so far as possible, in its details, and apply conscientiously in judicial proceedings. It was this exalted ideal of the office and nature of his profession, constantly acting upon his intellectual and moral faculties, that developed the greatness and nobility of his character, and produced the rich and abundant products of his life. This was the hidden spring of his power, and of his extraordinary success. All who would rival his fame must imbibe the spirit that impelled him to labor. Lofty conceptions are the essential precursors of great deeds.

Judge Shepley sought to be all he seemed to be, and was too great to rise by the too common accessories of fame and power. He was an exponent of that old-fashioned Anglo-Saxon liberty that is the birth of law,—a serene minister of that unseen Presence whose power is recognized in the curb which it puts upon human selfishness, passion, and violence, and in the impenetrable shield with which it covers our actions, our possessions, and our rights.

The prerogatives of his office he did not seek in the arbitrary discretion of tyrants, or the vagaries of an irresponsible mob, but rested them upon a code that drew its authority from eternal principles of justice. It is this constant recognition, in his opinions and his life, of that unwritten law of right which finds expression in the judgments of an uncorrupted judiciary, which gives to the memory of this distinguished alumnus its simple grandeur and its enduring fame.

GEORGE FOSTER SHEPLEY, LL. D.,

CLASS OF 1837.

BY DANIEL CLARK, LL. D., CLASS OF 1834.

THE day after the death of George Foster Shepley, a Boston morning paper announced that a "good judge had gone to his rest."

The announcement was true. He was a good judge, and he had gone to that rest which care, and labor, and pain could not disturb, and from which the voice of affection and love could not recall him.

But simply to say that one was a good judge gives very little idea of the person thus described. It merely asserts that he filled well his office; and so far, so good—no slight praise. But it fails entirely in giving even an impression of the man,—of the peculiarities or distinctive traits of his character, and of his individuality, or the "bone and fibre" of his identity.

Monadnock, Moosilauke, and Washington are high mountains. But to say thus much, and no more, fails entirely to give one any idea of their comparative size, their peculiar features, the beauty of the landscapes about them, or the views from their respective tops.

There have been a great many good judges, but no two of them have been alike, and many of them very dissimilar. Thus, Chief-Justice Richardson and Chief-Justice Bellows were both excellent judges, but very different in mental

characteristics, methods, and qualifications. The one had more learning and a broader culture than the other. His mental operations were much quicker, his temperament more ardent. The rulings of the other, though slower, were more uniformly correct, and his decisions very satisfactory,—his temperament more equable and gentle. Both equally loved the right. One came to his conclusions sometimes hastily, made mistakes, and had to retrace his steps; —the other came slower, more cautiously, and seldom erred.

So of Mr. Justice Story and Chief-Justice Parker: Both were learned and eminent judges, but very different men.

Returning to Judge Shepley: From personal acquaintance I can chiefly speak of him as a judge,—as I knew him on the bench and in the conference-room. I had not much acquaintance with him in social life, but, so far as I knew him, he was courteous, kind, affable, and gentlemanly; and so he is represented by those who knew him much better than I did. His manners were pleasant and agreeable.

He was born at Saco, Maine, January 1, 1819. He entered Dartmouth in 1833, at the age of fourteen, and graduated in 1837. Two years after (1839) he commenced the practice of law, at the age of twenty. He was first married in 1844, and again in 1872. He left at his death two daughters, both married, and a widow.

Nor had I any acquaintance with him while at the bar. He came to the college before I graduated, and I knew him here as a bright, promising lad; but I heard little of him afterwards until he went to "the field," and became military governor of Louisiana. He acquired his professional education at the Dane Law School, and came early to the bar.

He was the son of a distinguished chief-justice of the supreme court of Maine, and the training which he received at home, the conversation which he heard, and all the surroundings in which he lived, must have drawn his attention

to the law, while he was yet young, as the profession he was to follow. He may be said to have lived in an atmosphere of cases, courts, and juries.

Nor did his early training find him a dull scholar. It cannot be said of him that he mistook his calling. He might have been successful in other walks of life, but to no one was he better adapted than to the law. Both his physical and mental qualities were such that he could endure the labor, the excitement, and the strain which that profession imposes upon its followers.

He was sound in body, of good health and habits, comely in person, pleasing in address, fervid and eloquent in speech, cheerful and courageous in temperament, and cool and correct in judgment, with a memory "tenacious and ready."

He was earnest and persuasive with the jury, clear and logical with the court. He not only saw the points of a case distinctly in his own mind, but he could, in fitting language, make them distinct to others. He spent little labor upon unimportant matters, but kept steadily in mind, and firm in his grasp, the vital points, and compelled his antagonist to do battle where he was strong in his position.

He commenced practice in the county of Penobscot, in his native state, at Bangor. He did not remain at home, in Cumberland, near the paternal mansion, where he could receive friendly aid; but he stepped fearlessly out among strangers, relying entirely upon his own abilities. There were practising in Penobscot county at that time men of experience and note, but he made his way successfully among them; and when, a few years afterward, in 1844, he returned to his native county, and among men foremost in the state in legal ability, though still young he ranked up among the maturest and most experienced in the profession. "From the beginning," said a friend, "he was intrusted with important, responsible, and difficult causes," which he managed with such judgment, skill, and success as to give

his clients satisfaction, and attach to himself other clients and other causes.

In 1848, when twenty-nine years of age, so well had he conducted himself, and such a reputation had he acquired in his profession, that he was appointed attorney for the United States in the district of Maine;—the youngest man that had ever been appointed to that office. He held the position at that time but a few months, but was afterward reäppointed, and held the office for two full terms. "While in that office," says Mr. Justice Clifford, "was the trial of the *United States* v. *Holmes*—an indictment for murder on the high seas. Much excitement prevailed; and the defence was conducted by George Evans, one of the ablest and most eloquent men Maine has ever produced. Young as the district attorney was, I remember well to have felt that the prosecution suffered nothing in comparison, and that it was skillfully and forcibly conducted, even when placed by the side of a defence into which was thrown all the masterly qualities and moving eloquence of our greatest public speaker and forensic advocate."

When attempts at secession culminated in armed rebellion, he laid down the pen and took up the sword;—he shut the law book and opened the manual of tactics.

On the 27th of September, 1861, he accepted a commission as colonel of the 12th Maine, and went to Ship Island with General Butler.

Upon the occupation of New Orleans he was made military commandant of that city, and administered its civil and military affairs with ability and success. He was afterward military governor of the state, and a brigadier-general by appointment of President Lincoln.

In April, 1864, he was assigned to the command of the military district of East Virginia and North Carolina; and in 1865 was chief of staff of the 25th army corps, under General Weitzel.

When Richmond was occupied, on the 3d of April, 1865, he was at once appointed military governor of the citadel of the Rebellion.

But it is not my purpose to speak further of his military record. I do not remember, in all my acquaintance with him, to have heard him allude to it more than once, and that was in connection with some judgment which had been rendered in New Orleans while he was commandant there. His modesty was as rare as his service was faithful. He was no boaster. Thus, when in July, 1865, he was breveted Maj. Gen. U. S. Vols., he declined the honor, preferring the rank in which he served. It is sufficient to say that he performed the duties devolved upon him with ability, integrity, and success. He filled the expectations of his friends, and stirred up no personal complaints among the discontented, embittered Confederates. He went from the forum to the field. He left the field when the war was over, and returned again to his profession.

When he marched away he left his clients and his causes behind. They had to find new attorneys and new advocates. Of course his business was broken up and forsook him, or, rather, he forsook that. There was no certainty when he would come back, if ever. But such had been his reputation, that when he did return business at once came back to him, and he soon found himself in the full tide of professional employment. So he continued until appointed circuit judge of the U. S. court, Dec. 22, 1869. This was a new office, but with well known and familiar duties; and for the performance of those duties Judge Shepley was well fitted, and his appointment gave general satisfaction.

To constitute a good judge, two things, among others, are indispensably necessary:

1st. An unimpeachable integrity,—an unflinching purpose to do right; and,

2d. An ability to see what is right and just.

Without the former, there will be, on temptation or inclination, unrighteous judgments; and without the latter, blunders and mistakes. "He who would administer justice must himself be just." Both of these requisites Judge Shepley possessed.

No one ever doubted or cast a suspicion on his integrity as a magistrate, and no one ever intimated, so far as I am aware, that he was swayed by prejudice, passion, or partiality. His judgment was clear, and apparently unbiased; and he seemed to see, and did see, the points of a case, and the conclusion to which they led, almost as soon as stated.

One who knew him well, said,—"He could perceive the truth without much investigation, and discriminate error from fact without much labor; and was admirably adapted to the detection of obscure and well concealed weaknesses or fallacies in a narrative of alleged facts, and was equally expert in bringing the same to light."

There is a marked difference in men in this respect. Some seem to see the whole matter, through and through, at once, as it were by intuition: argument and illustration can scarcely make it clearer than it appears at first;—while others progress slowly, require the matter to be unfolded very carefully, stated at length, and need to think it over before they comprehend the subject or arrive at a conclusion. So with judges. Their mental operations are sometimes quick, sometimes slow. One sees pretty clearly, as soon as the facts are before him, the conclusion to which they lead, and then, if necessary, looks for the decisions and elementary principles on which that conclusion may rest;—while another wants to arrange and ponder over the facts, study them, hunt up all the decisions that can be found on the subject, and come to such a conclusion as they indicate, little relying on his own judgment. The one relies, in the first instance, on his own judgment, and then verifies it by the books;—the other consults the books first, and relies mainly on them for his conclusion.

Legal controversies require a nice discrimination in determining what is material to their solution, and what is not; and also in analyzing that which is material, in giving to each proposition or consideration its proper position, force, and weight.

This discrimination Judge Shepley had in full measure; and it was of very great advantage to him, especially in equity or patent causes, which formed a large share of the business of his court. He readily apprehended the relation, fitness, necessity, and effect of the several parts of a complicated machine,—what contrivances or instrumentalities were equivalent, and what was their office in different combinations.

In jury trials he presided with much dignity and courtesy. His rulings were to the point, and generally correct. He not only apprehended the question clearly, but he had the ability to state his decision in clear and explicit language, thus making it plain and forcible to litigants and counsel. His quickness and readiness of comprehension often placed him in advance of counsel. He saw ere they were aware the hinge of the controversy; yet he was patient to hear, listened to every argument or consideration, and no one complained that he "shut his ear" or turned away indifferent.

The legal decisions of a mind so constituted would, as a matter of necessity, be marked by its peculiarities. They were clear, incisive, and directly to the point. They were never ambiguous or obscure; and, while they showed no extended research, citation of authorities, or wealth of learning, they were generally correct, seldom questioned or overruled.

There was in them very little discussion of principles, balancing of precedents, or of attempt to reconcile conflicting opinions of other judges; but a clear statement and dealing with the points and peculiarities of each case,—a delineation, so to speak, of its peculiar features, and a

course of reasoning leading directly to the conclusion to which he had arrived.

Without being dogmatic, he was self-reliant; and without hunting and exploring to ascertain what others thought or held in analogous cases, he depended much upon his own judgment. Still, he was well read in his profession, gave due consideration and force to well-established principles and decisions, and never rendered a judgment which was derogatory to his high office as judge, or marred the symmetry of legal science.

He was a ready man. He performed well the duties of his high office. Yet his was not one of those exploring minds which extract gold from quartz, or dig the rich ore from the deep mines of the mountains. He used, well and wisely, what lay upon or near the surface, or came readily to his hand. He was a good judge. He died comparatively young, in the midst of his usefulness and labor. "To the human understanding," says again Mr. Justice Clifford, "nothing could be more adverse to the administration of justice, to the settlement of controversies, or to the usefulness of the federal courts in this district, than the removal of this eminent judge."

When one comes to die, nothing is sweeter or dearer than the kind words of friends about; and so, in closing, I leave on record here a resolution adopted by the circuit court of the United States, at Portland, where he lived and died, and where, in all the relations of life, and in all the qualities of his mind and heart, he was best known,—"that the public and private character of the late George F. Shepley commands the highest esteem and admiration. Endowed with the inspiration of genius for the law, he came early to the bar, and acquired rare excellence as a counsellor, advocate, and jurist. As a counsellor, he was judicious and wise; as an advocate, logical and eloquent; as a jurist, learned in the various branches of the law, and in some preëminent; as a judge, dignified, courteous, impartial, incor-

ruptible. When his country was in peril he left the former for the field, and, as military governor of Louisiana, displayed marked executive ability in the performance of his difficult duties; and, by firmness mingled with kindness, secured the confidence and high regard of the people of the state. Peace restored, he resumed the duties of his profession, and soon after was appointed to the high judicial position which he filled at the time of his decease. His domestic and social virtues are embalmed in the hearts of his family and friends."

Both father and son wore the judicial ermine. Neither sullied it, but each dignified it in the wearing. Both sleep together; and both are embalmed in the hearts and borne high on the records of their *alma mater*.

"Non omnis moriar."

In the halls of eternal and supreme justice may they each wear the "white robe."